

Impersonating Fishermen: Illegal Fishing and the Entry of Illegal Immigrants as Transnational Crime

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Illegal fishing carried out by foreign fishing vessels (Kapal Ikan Asing, KIA) and Indonesian fishing vessels (Kapal Ikan Indonesia, KII) in Indonesian waters also causes other crimes such as the entry of illegal immigrants to Indonesia. This writing aims to assess the relationship between illegal fishing and the entry of illegal immigrants as a form of transnational crime. The research method used is normative legal research. The sources of legal material used are primary, secondary and tertiary legal materials related to writing. The technique of collecting data through library studies and analyzed qualitatively. The results of the study show that Indonesia as the largest archipelagic country in the world with 17,504 large and small islands and a length of coastline of 81,700 km² makes Indonesia a country with abundant marine resource potential. For this reason, many foreign naval fleets have made Indonesian waters as the main destination for their capture fisheries. This capture fishery company has more foreign ownership, the exploitation of marine resources that we own both legally and illegally. Likewise, this also happened in the Moluccas territory. As a province of the archipelago with an ocean area of 658,295 km² with a coastline length of 11,000 km², the Maluku Sea holds abundant potential for marine wealth. Arafura Sea is one of the fisheries management areas which is often the main destination for foreign-owned fishing vessels. These fresh fish from the Moluccas are stolen and taken away in fresh condition directly to the area of origin of the perpetrators. Illegal fishing activities not only make Indonesia economically disadvantaged, but there is another problem, namely the existence of other crimes that usually follow the illegal fishing activities. One of them is the entry of illegal immigrants into Indonesian territory.

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INTRODUCTION

THE orientation of marine development in Indonesia began in 1957 which was marked by the emergence of the concept of "Archipelago Insight" as stated in the Djuanda Declaration on December 13, 1957 which claimed the territorial waters of Indonesia, and Kusumastanto (2003), stated that all

waters surrounding, between and connecting islands or parts of islands which belong to the plains of the Unitary State of the Republic of Indonesia, do not consider the extent and breadth of the fair parts of the Republic of Indonesia and thus are part of the waters national which is under absolute sovereignty of the Republic of Indonesia. Peaceful traffic through these inland waters for foreign vessels is guaranteed and simply does not conflict with the sovereignty and safety of the State of Indonesia. Determination of territorial sea boundaries with a width of 12 miles measured by lines connecting the outermost points on the islands of the Republic of Indonesia will be determined by law.

The declaration includes, among other things, the principle of "Archipelagic state" which views the sea area as a whole intact, rounded with land, air, sea floor and land beneath it, as well as the entire wealth contained in it. As an archipelagic country, geographically, the territory of Indonesia consists of a variety of large and small islands, namely around 17,504 islands with a length of 81,700 km² of coastline making waters within the sovereignty of the Republic of Indonesia and the Indonesian Exclusive Economic Zone and high seas containing resources potential fish and fish farming land. This is a blessing from God Almighty mandated by the Indonesian people who have the philosophy of life of Pancasila and the 1945 Constitution of the Republic of Indonesia. The potential of these marine resources must be utilized to the greatest extent for the welfare and prosperity of the people of Indonesia.

Utilization of marine resources, including fisheries resources, has not provided a sustainable and equitable standard of living through fisheries management, supervision, and an optimal law enforcement system. One of the problems faced is illegal fishing activities in the form of illegal fishing. Illegal fishing activities that are rampant nowadays are part of international problems that also have an impact on the losses suffered by Indonesia. At present, of the 14 fishing ground zones in the world, there are only two potential zones and Indonesia is one of them. The reason for the crisis is the fishing ground zone, due to over exploited or over fishing.

In general, overfishing is interpreted as the number of fish caught exceeding the amount needed to maintain fish stocks in a certain area. Overfishing does not merely have an impact on decreasing production and damaging the ecosystem. Because on a macro scale, overfishing can cause a phenomenon called fleet migration. With the increasing number of fleets, countries that have experienced a decline in stock and production, as well as increased competition, react by looking for more productive fishing ground both legally and illegally. This is what then leads to illegal fishing (Fauzi 2005: 28-32).

One of the regions in Indonesia which is the main destination for foreign fishing vessels (KIA) and Indonesian fishing vessels (KII) that carry out illegal fishing is the Maluku waters. Maluku is an archipelago province with an area of around 712,480 Km², of which most (92.4%) of the area is in the sea and only 7.6% of the land area. Maluku has a thousand islands

(nicknamed the Thousand Islands Province) with a land area of 54,187 Km², the coastline length ranges from 11,000 Km² with its sea area reaching 658,295 Km². The Maluku Sea saves natural wealth that cannot be valued by money (Andibya *et.al.* 2008). Maluku's marine resource potential reaches 1.64 million tons / year or 26.3% of the national potential of 6.26 million tons per year. The potential of fish resources is in 3 (three) Fisheries Management Areas (WPP), namely in the Banda Sea, Seram and surrounding sea, and Arafura Sea (Andibya, *et.al.*, 2008: 162-163).

The Arafura Sea is the main destination for foreign fishing boats from China, Thailand, Korea and Taiwan to commit Illegal fishing. This illegal fishing fleet enters through the Tores Strait in southern Papua New Guinea. Through this route, stolen fish are transported abroad. Illegal fishing crimes carried out by foreign vessels in Indonesian waters are transnational crimes. For Indonesia, transnational crime is a big threat, considering that Indonesia is not only a transit area for crimes that are categorized as transnational crime. However, Indonesia has become the main destination for these crimes, and one of the transnational crimes committed is illegal fishing around the Arafura Sea in Maluku Province.

Illegal fishing activities are usually followed by other crimes such as the entry of illegal immigrants, trafficking in persons, slavery, narcotics trafficking, arms trafficking, carried out by foreign citizens, crossing national borders and of course having a negative impact on Indonesia. One of the cases that occurred was related to capture fisheries activities carried out by several vessels owned by foreign companies affiliated with companies owned by Indonesian entrepreneurs, namely PT Pusaka Benjina Resources in Benjina, Aru Islands Regency, Maluku Province. As a result of the practice of illegal fishing carried out by PT Pusaka Benjina Resources, and accompanied by the practice of trafficking in persons (bringing in foreign workers/labors from Cambodia, Laos, Myanmar and Thailand using fake documents) and slavery (these illegal laborers are not treated human) shows us that the practice of illegal fishing can be followed by other crimes such as the entry of illegal immigrants into the territory of Indonesia.

THE RELATIONSHIP *of* ILLEGAL FISHING WITH THE EMERGENCE *of* ILLEGAL IMMIGRANTS AS A FORM *of* TRANSNATIONAL CRIME

THE concept of illegal fishing contained in the framework of IUU (illegal, unreported and unregulated) fishing practices was first raised in 1997 in the CCAMLR forum (Commission for Conservation of Arctic Marine Living Resources). IUU Fishing is grouped into:

- 1) Illegal fishing, which is illegal fishing activities in the territorial waters of a country or does not have permission from that country;

- 2) Unreported fishing, namely fishing activities in the territorial waters or economic exclusive zone (*Zona Ekonomi Eksklusif*, ZEE) of a country that are not reported both operational and vessel data and catches;
- 3) Unregulated fishing, namely fishing activities in territorial waters or ZEE of a country that does not comply with the applicable rules in that country.

The definition of illegal fishing issued by the illegal International, Plan of Action (IPOA) and unregulated (IUU) fishing initiated by FAO as the implementation of the Code of Conduct for Responsible Fisheries (CCRF), is as follows (Mukhtar 2015):

- 1) Fishing activities carried out by a certain country or foreign vessels in waters which are not their jurisdiction without permission from countries that have jurisdiction or fishing activities are contrary to the laws and regulations of that country.
- 2) Fishing activities carried out by flagged fishing vessels of one of the countries that are members of a regional fisheries management organization, the Regional Fisheries Management Organization (RFMO), but the operation of its vessels is contrary to fisheries management and conservation measures adopted by RFMO. RFMO countries must follow the rules set or other rules relating to international law
- 3) Fishing activities that are contrary to the laws of a country or international provisions, including the rules set by RFMO member countries.

Whereas the term illegal fishing is not contained in the formulation of article fisheries law, both those qualifying as crime and violation. The term illegal fishing is only found in the explanation of Law Number 45 of 2009 concerning Amendments to Law Number 31 Year 2004 concerning Fisheries. But there is no understanding or further explanation about illegal fishing. Supervision of Marine and Fisheries Resources of the Ministry of Maritime Affairs and Fisheries, gives a limit to the term illegal fishing as illegal fishing activities (PSDKP Kendari 2008), so fishing activities that are not regulated in the existing legislation.

The losses incurred by illegal fishing are not only calculated based on the value of the stolen fish, but have a fairly extensive impact, among others (Mukhtar 2015):

1. Fuel subsidies are enjoyed by unauthorized vessels
2. Reduction of Non-Tax State Revenues (PNBP)
3. Job opportunities for Indonesian (local) fishermen are reduced, because illegal vessels are foreign vessels that use foreign crews
4. The catch is generally taken directly abroad (ship's country of origin) resulting in:
 - a. The loss of part of the country's foreign exchange
 - b. Reduced value added opportunities from the processing industry
5. Threats to the preservation of fish resources because the catch results are not detected, both in type, size and number
6. Damaging the image of Indonesia at the international level because of illegal fishing carried out by foreign vessels with Indonesian flags and

ships belonging to Indonesian citizens. This can also have an impact on the threat of an embargo on Indonesian fisheries marketed abroad

7. Economic losses incurred include:
 - a. Fisheries levies paid at Indonesian vessel tariffs
 - b. Fuel subsidies enjoyed by unauthorized foreign vessels
 - c. Stolen fish production (volume and value)

Illegal fishing activities which often occur in the waters of Maluku are fishing theft of foreign fishing vessels from neighboring countries. The results of supervision carried out during the period 2005-2010 can be concluded that illegal fishing carried out by KIA mostly occurred in the EEZ and also quite a lot happened in the islands waters. In general, the types of fishing gear used by KIA in carrying out their actions are productive fishing tools such as purse seine and trawling (Mukhtar 2015).

The study of illegal fishing in Arafura, conducted by the Capture Fisheries Research Center (*Pusat Riset Perikanan Tangkap*, PRPT), DKP collaborated with FAO in 2007-2008. The study shows that in the 2001-2005 period, around 1,258 million tons of fish were lost every year due to illegal fishing practices. This amount consists of 239.7 thousand tons of fish discarded or often called by catch (by-catch), 364.4 thousand tons of caught fish not reported, and 654.6 thousand tons of fish caught illegal (Agency for Marine and Fisheries Research).

The PRPT and FAO study used the latest data in 2005. However, it did not mean that IUU's fisheries had been systematically reduced in the Arafura Sea. At the end of December 2007, a joint team from the Maluku Regional Police and the National Police Headquarters captured the IUU fishing vessels in the waters of the Aru Islands. During the incident, two Panama-flagged transport vessels, namely Sutti Reefer and Brilliant Reefer were arrested while transferring fish from fishing vessels named KM Antasena 309, KM Antasena 815, KM Antasena 816, KM Antasena 809, and KM Kartika 102. Besides transfer of fish catches from ships that are in violation of the rules, fishing vessels are also suspected of violating the rules for using fishing gear (Ramidi and Desy 2008).

Presently, around 2,000 Filipino fishing boats illegally catch tuna in the waters of Sulawesi, Maluku, North Maluku and Papua. These Philippine fishing fleets often enter deep inland waters, often near the coast. These Philippine ships are known as pump-boats, made from plywood and using diesel engines that are quite high. Philippine boats are less than 10 GT, with an average crew of around 10 people, have very high cruising to catch tuna and are taken to the General Santos port, the Philippines is fresh (Nikijuluw 2008).

According to data from the Director General of Marine and Fisheries Resources Supervision, until the end of August 2013, the Ministry of Maritime Affairs and Fisheries (KKP) has captured 58 fishing vessels that illegally arrested. Of these, around 67% are Foreign Fish Ships (KIA), which consist of 11 Malaysian vessels, 7 Philippine vessels, 17 Vietnamese vessels, 4

Thai vessels. While as many as 19 ships or 33% are Indonesian Fishing Vessels (KII) (Ditjen PSDKP 2014).

Maluku ranks first in the number of ship compliance violations involving 350 problematic vessels. The majority of violations occur around the Aru islands. 95 percent of the ships employ captain and foreign crewmen without documents or complete documents, have many flags, VMS that is not activated so that the ship's position is unknown (Fajar 2015). The Task Force Team for the Prevention and Eradication of Illegal Fishing at the Ministry of Maritime Affairs and Fisheries also found 200 violations in North Sulawesi, 150 in Bali, 140 in Papua, and 60 violations in the Riau Islands with additional violations such as the arrest and export of protected fish, import of illegal goods, fictional legal entities and mark-down of vessel weight (Fajar 2015).

For the case of PT Pusaka Benjina Resources (PT PBR), according to the head of the Illegal Fishing Eradication Task Force, Achmad Santoso said that PT PBR was allegedly affiliated with a Thai company. PT PBR in Indonesia has 3 subsidiaries, namely PT Pusaka Benjina Nusantara, PT Pusaka Benjina Armada, and PT Pusaka Benjina Bahari. PT PBR has 96 ships and the vessels are also owned by Thai companies. Of the total 96 vessels, there are 70 vessels owned by PT Silver Sea Fishery, 16 vessels owned by PT Thai Hoang Huad and 10 vessels owned by PT Ocean Research Fishery, all three of which are located in Thailand (Fauzi 2016; Darulzain, Supriyadhie, and Rahayu 2017). So far, PT PBR has received large funds/capital injections from Thailand, so that the position of PT PBR in Indonesia is just like an agent. For the composition of its shares, it is suspected that the Thai company has a position of more than 50% while the rest is held by domestic investors (Fauzi 2016).

According to an investigation by an Associated Press (AP) reporter, thousands of poor migrant fishermen from Myanmar, Laos, Cambodia were recruited in Thailand and taken to Indonesia using fake documents. They are often treated inhumane. Some of them have been enslaved for years. The Associated Press (AP) also found several people locked in cages. In a cemetery managed by one company there are dozens of graves with fake names. After news from the AP spread, the Indonesian security forces in April 2015 took action to rescue. More than 2000 people were released and sent home. According to the results of the investigation, the seafood products produced by the fishermen were sold to large networks in the United States such as Wal-Mart, Sysco, Kroger, Fancy Pesta, Meow Mix and Iams (Antara 2016).

Based on KKP data, there were 322 foreign workers (crew members) who had been transferred from Benjina to Tual. Consisting of 256 people from Myanmar, 58 people from Cambodia, 8 people from Laos. While there are 800 people from Thailand (DetikNews 2015; Interpol 2013). The presence of foreign workers from neighboring countries such as Myanmar, Laos and Cambodia uses fake documents to enter Indonesian territory and works as PT

PBR crew members without going through clear and definite procedures in the case of inappropriate recruitment of foreign crews. with Management of Permits Using Foreign Workers (IMTA) conducted by the Ministry of Manpower and Transmigration at the BKPM PTSP, which has been regulated in the Regulation of the Head of BKPM No. 5 of 2013.

The President of the Republic of Indonesia, Joko Widodo, said that currently more and more countries in the world are aware that Illegal Unreported Unregulated (IUU) Fishing is a transnational crime whose impact in the world is quite extraordinary. Our oceans that cover 71% of the earth's surface are threatened with sustainability by the practice of IUU Fishing. Even though according to Jokowi, the sea is a source of income for 520 million world population and food source for 2.6 billion people. The practice of IUU Fishing has reduced fish stocks by 90.1%. He said IUU Fishing was also linked to other crimes such as smuggling of goods and people, illegal laborers, smuggling of narcotics, and violations of regulations on natural protection and hygiene. This means that IUU Fishing has developed into a transnational crime that is very serious and organized (Kurniawan 2016).

According to Jokowi, it is very important for Indonesia to fight transnational organized crime with global collaboration. He stressed that Indonesia could not inhabit the issue of IUU Fishing. In 2014, FAO said Indonesia was ranked as the second largest producer in the world for marine fish with a catch of 6 million tons, equivalent to 6.8% of total world production of marine fish. According to him, IUU Fishing has resulted in Indonesia's economic loss of 20 billion US dollars per year. This also threatens 65% of coral reefs in Indonesia. Therefore, in the last 2 years Indonesia has continued to maintain and try to secure the practice of IUU Fishing such as the capture and sinking of 236 fishing vessels. From these results, it is seen that the level of fish exploitation in Indonesia has decreased between 30-35%, thus enabling us to increase national fish stocks from 7.3 million tons in 2013 to 9.9 million tons in 2015 (Kurniawan 2016).

The same was stated by the Indonesian Minister of Maritime Affairs and Fisheries, Susi Pudjiastuti at the opening of the 2nd International Fisheries Crime Symposium in Yogyakarta. He urged that the United Nations (UN) recognize Illegal Fishing as a transnational crime. According to him, Indonesia currently supports so that fisheries crimes such as IUU Fishing are recognized as organized transnational crimes based on the United Nations Convention against transnational organized crime (United Nations Convention on Transnational Organized Crime-UNTOC). Susi said, illegal fishing was a serious crime because it followed other crimes. Based on the analysis and evaluation he conducted on 1,132 ex-foreign vessels, IUU Fishing has cross-country elements and is carried out in an organized manner (Pramono 2016).

Thus it can be judged that there is a connection between illegal fishing activities carried out by foreign vessels around Indonesian waters, especially in Maluku waters, it is also followed by other crimes such as the entry of

illegal immigrants from neighboring countries. They are recruited and transported using foreign vessels which are also used to carry out capture fisheries in Indonesian waters. After being included in Indonesian territory illegally, these migrants were hired inhumanely to foreign-owned fishing companies as well.

ILLEGAL IMMIGRANTS IN INDONESIA: A GENERAL CONDITION

AS an archipelago, Indonesia has many entrances both in the sea, land and in the air. Moreover, Indonesia's geographical location which is in a cross position in the international trade route has caused Indonesia's territory to be prone to transnational crime. One of the transnational crimes that is a serious problem for the Indonesian nation is the entry of illegal immigrants. Based on data from the Indonesian National Police until October 2013 there were 10,593 cases of illegal immigrants entering Indonesian territory through the waters (sea) (Yulianingsih 2013). Because of the geographical location of Indonesia as the largest archipelagic country and weak supervision, the sea lane is an option that is considered safe for illegal immigrants.

Data from the Ministry of Foreign Affairs (Kemenlu) states that there were 14,425 illegal immigrants from 47 countries who entered Indonesia. Of these 8,039 people are refugees and 6,386 asylum seekers. There are five countries that dominate the country of origin of immigrants, such as from Afghanistan, Somalia, Iraq, Myanmar and Nigeria. Not much different from the data from the Head of Immigration Superintendence Directorate General of Immigration M Adnan, who stated that there were a total of 14,337 illegal immigrants in Indonesia as of June 30, 2017, and based on UNHCR data, the number consisted of 5,701 asylum seekers and 8,636 refugees, with 4,059 women, and 10,278 men (Kumparan 2017).

One organization that cares about the fate of migrants is (International Organization for Migrations) IOM. This organization has a commitment to advance orderly and humane migration for the benefit of all. Population migration is a change of activity for both permanent and semi-permanent dwellings that can include migrants, immigrants, temporary workers, guest workers, students and illegal immigrants, who cross a national boundary. In this interpretation it does not include groups of tourists and diplomatic communities (Haris and Andika 2002), so migration is a process of moving people from one country to another.

Illegal immigrants are migrations that occur outside the procedure and state rules that exist or also move people through national borders that violate applicable migration rules (IOM 2012). There are four situations the person is called illegal immigrants (Johan 2013; Andayani 2016), namely:

- 1) Immigrants who enter clandestine (hide) with fake documents
- 2) Fixed more than the allowable time

- 3) Victims of people smuggling networks
- 4) Intentionally harassing the international asylum system

So it can be concluded that illegal immigrants are people who move from one country to another and cross national borders by not having official documents implied by the country of origin or destination, or citizens of other countries who live in a country beyond the time of the residence permit.

The term illegal immigrants develops as complex population traffic includes refugees, asylum seekers, immigrants on economic grounds, immigrants for environmental reasons, smuggling immigrants, victims of human trafficking (stranded migrants), stranded migrants (Johan 2013). All migrants regardless of the term they carry have the right to be given protection based on human rights. This is because in addition to the civilized nation, Indonesia ratified the Human Rights Convention through Law No. 39 of 1999 concerning Human Rights.

If seen from the definition or definition of the term illegal immigrants who are people who move from one country to another and cross national borders by not having official documents implied by the country of origin or destination country, or citizens of other countries who live in a country exceeding time of residence permit, and if seen from the situation someone is said to be an illegal immigrant namely; Immigrants who entered clandestine (hiding) with fake documents, settled more than the allowable time and Victims of people smuggling networks, so in the case of PT Pusaka Benjina Resources (PBR) which included the Ship Fruits (ABK) and foreign workers showed that besides Capture fisheries activities that violate PT PBR's rules also commit other crimes, including entering people from neighboring countries and recruited in Thailand and then transported to Indonesia using fake documents. They entered Indonesian territory through fishing vessels used to carry out fishing activities in the Indonesian territory, especially Maluku waters.

According to Kesbangpol Pekalongan (2016), the mode commonly used by illegal immigrants to enter Indonesian territory as follow:

- 1) Enter Indonesian territory from Malaysia, Vietnam, Thailand
- 2) There are facilitators / smugglers (from Malaysia paying USD 400)
- 3) Use mouse / traditional paths along the northern coast of Sumatra
- 4) To Jakarta Via airplane / ship / bus (destination): submit asylum seeker status. Refugees at UNHCR
- 5) Stay in the place of acquaintance / relatives or become IOM's dependents
- 6) If there are opportunities, funds and facilitators (smugglers) go to Australia illegally

Prone Area as the entrance or transit point for illegal immigrants are: Semarang, Solo, Purworejo, Kebumen, and Cilacap.

In fact, the islands, especially the islands, which are far from the reach of law enforcement officials, have become the target of illegal immigrants as entrances. They use fishing vessels which are generally foreign owned to carry out the process of transporting these illegal immigrants into Indonesian

territory. The entry of illegal immigrants into Indonesia raises some problems including socio-cultural, economic and also security problems. The new culture they carry is not necessarily able to blend with the culture or tradition of the local community. This can actually lead to social conflict in society. The economic impact caused by illegal entry will reduce the state income through import duty (visa). In addition, the unemployment rate will increase because foreign workers with low wages will be the choice of employers compared to employing Indonesian citizens. Because life is lacking as well as socio-cultural clashes with the local community, it will cause unrest in the community because of the sense of security and comfort that is disturbed due to the actions of these illegal immigrants.

Even so, Indonesia cannot arbitrarily drive away these illegal immigrants. In addition to being bound by the Convention on Human Rights, Indonesia already has an agreement with the International Organization for Migration (IOM), which is a special UN body that deals with immigrant issues. These illegal immigrants are funded by IOM, they will be recorded, sorted and will be arranged by the immigrants. If there is a country that is willing to accept, IOM will send. On the contrary, these illegal immigrants can be deported.

Indonesia does not yet have a law specifically regulating the problem of illegal immigrants. They make Indonesia not only as a transit country but as a final destination country. Many illegal immigrants enter Indonesia on the grounds of refugees and asylum seekers. While waiting for their status decided by UNHCR in Jakarta¹ and these immigrants feel safe in Indonesia. The illegal immigrants who entered Indonesia also took advantage of the status of victims of human infiltration. They are considered as victims of human smuggling, even though Indonesia does not yet have laws specifically regulating the problem of human smuggling. In addition to its friendly population, its vast territory, the weakness of legislation and the government's lack of determination in facing the entry of illegal immigrants, it is interesting for them to make Indonesia the final destination. Political motives which usually become the main reason for illegal immigrants to cross Indonesian territory, have begun to shift to economic problems as a strong reason for illegal immigrants. So the causes of illegal immigrants entering Indonesia due to ethnic conflict, domestic and political security conditions, the existence of human rights violations, the economic crisis (low welfare level) and the persuasion of people smuggling syndicates, have shifted to a better livelihood (economic) by looking for work as illegal foreign workers.

The handling of illegal immigrants in Indonesia is carried out using the Immigration Act, Law No. 6 of 2011 which has adopted the principles contained in the United Nations Convention Against Transnational Organized Crime and its two additional protocols (Protocol to Prevent,

¹ The presence of UNHCR in Indonesia which is procedurally considered by asylum seekers to be faster in issuing refugee status.

Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime and Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime). Through the immigration law, the state has the right to regulate the presence of foreigners in the territory of the Unitary Republic of Indonesia who enter legally or illegally. But in its implementation, there are still some weaknesses, among others, said illegal immigrants show that asylum seekers and refugees are still considered part of immigrants in general. Not in another category, namely refugees. Because of Indonesia has not ratified the 1951 refugee Convention, in addition, the Protocol on Smuggling of Migrants places illegal immigrants as victims of smuggling, namely people who are objects to be taken economically by paying a sum of money to smugglers, thus there is no deterrent effect for immigrants because according to the principle of the protocol they are victims not as perpetrators or part of the smuggling business. That the problem when these immigrants are released from the criminal sanctions.

THE ROLE *of* INTERNATIONAL CRIMINAL LAW *on* ILLEGAL FISHING *and* ILLEGAL IMMIGRANTS CASE

IN the era of globalization, conflicts that occur in international relations are generally triggered by the scarcity of natural resources, water availability, hunger, poverty, distrust, hostility and egocentrism of each entity in interacting with each other. Regarding the scarcity of natural resources, an increase in the world's population and the need to develop the economy have led to extraordinary extraction of fish resources. Now fish has become an important commodity for the world globally. The rapid development in the field of capture technology has not only brought a positive impact in the form of increasing fish production globally, but also a decline in some fish stocks in various waters.

Indonesia as one of the largest archipelagic countries in the world saves reserves of this marine resource. So that Indonesian territorial waters are certainly the main target of capture fisheries perpetrators, which are mostly carried out by foreign citizens, to exploit our marine resources both legally and illegally so that illegal fishing can cause loss which not small for Indonesia.

As the largest archipelagic country in the world, the threat of transnational crime is very open to Indonesia. The handling of transnational crime must be taken seriously. Its structure and characteristics are usually organized so that it is difficult to be dismantled by the approach of mere legal investigation, of course, it cannot be done alone by law enforcement official (Srigunting 2012).

Transnational crime is a crime that does not recognize the territorial borders of a country (borderless). The modus operandi, form or type and *locus*

tempus delicti involve several countries and various state laws. The term transnational first appeared in the early 20th century to illustrate a new way of understanding inter-cultural relations. Transnational is a social movement that arises because of the increasing inter-connectivity between humans on the entire surface of the earth and the waning of national borders.

Law enforcement for transnational crime basically refers to the principle of “*Au Dedere Au Punire*” meaning that transnational criminals can be convicted by a country where *locus delicti* occurs within the country's territorial boundary or is handed over through extradition procedures to requesting countries that have jurisdiction to try the perpetrators (Olii 2005). The types of crimes including transnational crimes include Trafficking in illegal drugs, Human Trafficking, People Smuggling, Smuggling Arms, Money Laundering, illicit trade in light weapons. Some characteristics of transnational crime are (Sefriani 2016):

1. Crimes that stipulated in international conventions
 - a. UN Convention against Transnational Organized Crime
 - b. Protocol against Smuggling of Migrants Land, Air and Sea
 - c. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman & Children
 - d. Protocol against the illicit Manufacturing & Trafficking in Firearms, their parts and components and ammunition
2. Actors involve several nationalities
3. As a result of criminal acts harm the interests of several countries
4. *Locus delicti* is carried out outside the territory of the affected country
5. Economic or financial motives dominate the background of transnational crime
6. Need international/regional cooperation to mitigate it. For example extradition, MLA, law enforcement cooperation, collection and exchange of information, joint investigations, transfer of criminal proceedings and others
7. Courts that have jurisdiction are national courts.

Muladi (2016) also highlighted that in the Palermo Convention on Transnational Organized Crimes in 2000, it was said to be transnational crime if it fulfilled the following matters:

1. An organized criminal group
2. Committing crimes in more than one country
3. Committing a crime in one country but its substance such as preparation, planning, direction and control occurs in another country
4. Committing a crime in a country but involving an organized crime group that commits crimes in more than one country
5. Committing crimes in more than one country but having the effect of substance in another country

The legal principle that applies to transnational crime is the principle of *Au Dedere Au Punire*, thus a court that has jurisdiction is a national court with

territorial, national or protection principles. Related to transnational crime, the function of international criminal law is to harmonize between national state criminal law with one another. Given that the prevention of transnational crime requires international cooperation, the existence of international criminal law that provides legal instruments to work together and provide legal assistance can be used as a solution (Sefriani 2016).

The role of international criminal law in overcoming IUU Fishing as transnational crime can also be seen by encouraging solidarity and international cooperation which is believed to be an alternative solution in the prevention and eradication of transnational crime and international crime in addition to repressive law enforcement solutions that prioritize solely a legal formal approach. Moreover, the perpetrators of illegal fishing in Maluku waters are generally citizens of neighboring countries such as Thailand, Vietnam, the Philippines of Taiwan, and China and the area that is always passed by perpetrators of illegal fishing to carry away stolen fish abroad which usually passes through neighboring countries such as PNG and Australia. Therefore, cooperation between neighboring countries to prevent and eradicate illegal fishing is highly expected. Good faith is needed from these neighboring countries so that they do not seem to let or protect their citizens who are perpetrators of illegal fishing in our waters.

The existence of international criminal law has also encouraged various co-operations in the field of criminal law such as cooperation in repatriating victims of trafficking and smuggling, as was done by PT Pusaka Benjina Resources. There is good faith from neighboring countries whose citizens are victims of trafficking to work with the Indonesian government to repatriate 400 citizens of Myanmar, Laos and Cambodia and 800 Thai nationals who are illegal laborers in companies engaged in fisheries catch this. Thailand as the country of origin of the perpetrators of illegal fishing and trafficking in persons was involved and cooperated with the Indonesian side when several staff representatives of the Thai government came to Benjina to see firsthand the conditions of the victims, and the existence of PT PBR, a Thai company affiliated with local companies in Indonesia. Thailand also gave full authority to the Indonesian government to investigate and resolve cases of illegal fishing and trafficking so that five of its citizens were sentenced to 3 years in prison by the Tual District Court, Maluku Province.

There are so many crimes related to crime in the field of capture fisheries. The crime of the fisheries sector is a cross-sector crime. So that in its handling on a cross-sectors approach is needed. The existence of coordination and technical training between related agencies is needed to minimize the crime of illegal fishing and the entry of illegal immigrants.

CONCLUSION

It is highlighted that there is a relationship or relationship between illegal fishing and the entry of illegal immigrants into the territory of Indonesia. As the largest archipelagic country in the world, Indonesia has many entrances, one of which is through the vast waters or seas of Indonesia. This is also what makes Indonesia vulnerable to being the main target of transnational crime. One serious crime that has not been recognized by the United Nations as transnational crime even though it actually has cross-country elements, illegal fishing is also a serious crime that must be prevented and overcome because there are other crimes that usually follow the illegal fishing activities. One of them is the entry of illegal immigrants transported in foreign fishing vessels.

Illegal immigrants entering Indonesia generally use the reasons for refugees and asylum seekers. The five countries that dominate are Afghanistan, Somalia, Iraq, Myanmar and Nigeria. Ethnic conflict, political situation, low welfare in the country of origin and wanting to find a better livelihood are the motives of illegal immigrants to enter Indonesia. The mode of illegal immigrants goes more into Indonesian territory by sea. Because of the geographical location of Indonesia as the largest archipelagic country, it caused many entrances and weak supervision. The legal principle that applies to transnational crime is the principle of *Au Dedere Au Punire*, then the function of international criminal law is to harmonize between one country's national criminal law with one another.

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Law Adagium

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**“QUIQUID EST
IN TERRITORIO,
ETIAM EST DE
TERRITORIO”**
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What is within the borders
of the state is subject to that
country's law