

RESEARCH ARTICLE

# Juridical Review of Illegal Fishing in Indonesia as Transnational Crime

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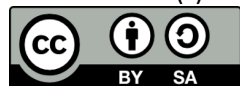
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## Abstract

Indonesia is an archipelagic state which has a sea area wider than its land area. Where the sea area stores abundant fish resources. This triggers the desire of foreign countries to take part in an illegal way, namely illegal fishing. The theft of fish in Indonesian seas by ships with foreign flags has violated sovereignty and is detrimental to Indonesia economically, socially, and ecologically. The Ministry of Maritime Affairs and Fisheries noted that illegal fishing has resulted in state losses of up to US \$ 24-30 billion per year. Illegal fishing is a fishery crime and is a form of transnational crime because its elements involve more than one country, namely planning, preparation and the consequences of this crime, involving more than one country. So that the practice of illegal fishing must be prevented and eradicated as soon as possible, because the natural wealth in the sea must be protected for the maximum benefit of the people. Illegal fishing regulations are contained in national law and international conventions.

**Keywords:** *Archipelagic State; Illegal fishing; Transnational crime; National Law; International conventions*

## 1. INTRODUCTION

Indonesia is an archipelago country (archipelagic state) which has a sea area wider than its land area<sup>2</sup>, which is 2/3 of its territory consisting of the sea with about 17,504 islands.

It also has the second longest coastline in the world, which is 108,000 kilometers long ([Ministry of Marine Affairs and Fisheries of the Republic of Indonesia, 2019](#)) where the sea area puts abundant fish resources. As stated in Article 25A of the 1945 Constitution of Republic of Indonesia (UUD NRI 1945) that Indonesia is an archipelagic State, this provision emphasizes that Indonesia has a large sea area and is divided into islands. This triggers the desire of foreign countries to take part in an illegal way, namely *illegal fishing*.

Illegal fishing occurs in Indonesian waters and involves many countries has had a detrimental impact on Indonesia. These losses include losses in the political, economic, social, defense and security and ecological fields. According to a report by the Food and Agriculture Organization (FAO), IUU fishing has reduced world fish stocks by 90.1% and causes global losses of up to 26 million tonnes of fish each year. It is recorded that the practice of IUU fishing in the Pacific Ocean region alone reaches 4-7 million tons /year and causes economic losses of USD 8.3 million. Not only economically, countries that experience IUU fishing practices also suffer losses on biodiversity. Based on recorded data, catches prior to 2015 show that the catch of shrimp, snapper and grouper from the Arafura Sea is decreasing and the size is getting smaller.

The availability of fish is very important to meet the nutritional needs of Indonesian children. Increased fish consumption can contribute significantly to children's nutritional development. But ironically, in a country that is very rich in fish resources, there are still many children who are stunted due to malnutrition. In 2018 the prevalence rate of stunting in children under five was 30.79%. This figure is indeed better than in previous years, but efforts should be made to reduce this stunting rate, namely by maintaining the availability of fish as a source of nutrition for Indonesian children. So, the theft of fishing by foreign ships is very detrimental to the future of the nation.

International law has also regulated the jurisdiction of a country over its sea area. The international law is the United Nation Conventions on Law of the Sea 1982 (UNCLOS). As an archipelagic country, Indonesia has become one of the countries that benefited the most from the 1982 United Nation Conventions on Law of the Sea (UNCLOS). UNCLOS 1982 has spawned eight jurisdictions

about the sea that inland waters (internal waters) territorial sea (territorial sea), the waters of the archipelago (archipelagic waters), additional zones (contiguous zone), the EEZ (exclusive economic zone), the continental shelf, seas (high sea) and the international seabed area.

The theft of fish in Indonesian seas by ships with foreign flags has violated sovereignty and is detrimental to Indonesia economically, socially, and ecologically. In 2018 the Ministry of Maritime Affairs and Fisheries noted that illegal fishing has resulted in state losses of up to US \$ 20 billion or Rp. 240 trillion per year. In addition to harming the country's economy, illegal fishing also damages the economy of fishermen, who depend on fishing for their livelihoods to make ends meet. At that time, the Minister of Maritime Affairs and Fisheries, Susi Pudjiastuti, said that Indonesia's losses due to illegal fishing had reached IDR 2,000 trillion. This matter proves that the practice of illegal fishing in Indonesia is quite difficult to eliminate because one of the reasons is that simultaneously monitoring the vast Indonesian sea area is not easy. Handling of illegal fishing must be supported by the readiness of human resources as well as facilities and infrastructure.

Illegal fishing as a fisheries crime can be categorized as a form of transnational crime because its elements involve more than one country, namely planning, preparation and the consequences of the crime involving more than one country. As contained in Article 3 of the UNTOC Convention (Palermo Convention) which emphasizes the elements of transnational crime. The practice of Illegal fishing must be prevented and eradicated as soon as possible, because the natural wealth in the sea must be protected for the maximum benefit of the people. Regulations Illegal fishing are contained in national law and international conventions.

The practice of illegal fishing can be defined as activities, where the fishery activity is carried out by a certain country or foreign vessels in waters that are not its jurisdiction without permission from the country that has jurisdiction or the activity fishing is contrary to laws and regulations of that country.

The practice of illegal fishing is an organized transnational crime and has caused serious damage to a country. Apart from being detrimental to the economy,

social and ecology, this practice is an act that weakens the territorial sovereignty of a nation. Illegal fishing is a serious problem for coastal countries in various parts of the world, including Indonesia, but Indonesia is the country with the most interest because illegal fishing is more common in Indonesian seas.

## **2. METHOD**

The method used in this research was the socio-legal approach. The socio-legal approach is a combination of approaches within the social sciences, including political science, economics, culture, history, anthropology, communication, and a number of other sciences, which are combined with approaches known in legal science, such as learning about principles, doctrine and hierarchy of legislation. The socio-legal becomes a single concept for the combination. Thus, the legal analysis conducted has a broad and interdisciplinary point of view in describing the issues raised in this study.

The socio-legal research method to form a comprehensive paradigm in describing the legal issues raised, in addition to describing the legal mechanisms contained in UNCLOS 1982, UNTOC 2000 and Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fishery. So, it is not only focused on legislation which is the focus of this research.

## **3. RESULT AND DISCUSSION**

### ***A. Definition of Illegal Fishing***

Literally Illegal fishing is two words that come from English, namely illegal and fishing. The word "Illegal" in terminology is defined as something that is prohibited, opposed and illegitimate according to the law, while for the word "Fish" means fish and "fishing" means catching or fishing for a living. So that illegal fishing has the meaning of activity by fishermen which is carried out irresponsibly by violating applicable laws and regulations. One example of fishing activities that violate the law in fishing is fishing using fishing gear that has the potential to damage the marine ecosystem.

Unreported illegal fishing and break the law is known as IUU (Illegal, Unreported and Unregulated) Fishing. The causes of illegal fishing are caused by several

things, namely; increased demand for fishery products in local and global markets, overcapacity subsidies in the fisheries sector, reduced ability of the state to control fishing vessels, and ineffective control and monitoring of fishery activities. This term refers to fisheries policy and management in any fishing activity in the sea is conducted in ways that contradict or circumvent laws related to conservation and management of domestic and international fisheries.

IUU fishing can literally be defined as illegal fishing activities, not reported to the authorized fisheries management institution, and fishery activities that have not been regulated in existing regulations. IUU fishing can occur in all fishing activities regardless of location, target species, fishing gear used and the intensity of exploitation, both on a small scale and industry, in national and international jurisdictional zones.

According to the Ministry of Marine Affairs and Fisheries, the definition of Illegal fishing can be defined as an activity which breaks the laws or regulations in force. Unreported fishing is fishing activity that is not reported or reported incorrectly. Unregulated fishing is fishery activities, such as fishery activities carried out in water areas or for fish stocks where there are no conservation and management arrangements that can be applied.

### ***B. Definition of Transnational Crime***

Transnational crimes are involving two or more countries that violate the jurisdiction of a country. Transnational organized crime is a type of crime which includes cross-border organized networks, then involve various criminal law systems. It applies between countries, and the methods, practices and activities that obstruct more than one legal system in a country, as well as the flow of funds that are carried out illegally. Transnational crime is defined by the United Nations Convention against Transnational Organized Crime (UNTOC) as a crime that is structured, committed collectively for all member countries and is a model of deliberate crime in more than one country. The crimes affected many countries and represented a common element of crime: planning, preparation, and direct control of crimes in other countries.

Transnational organized crime is a type of crime that includes cross-border organized networks which then involve various criminal law systems. It applies between countries, as well as the methods, implementation, and activities that obstruct more than one legal system from a country. As well as the flow of funds carried out illegally, so there needs to be cooperation between countries in overcoming these crimes. From the Indonesian side, transnational crimes need special attention given the strategic location of Indonesia so that it is vulnerable to various forms of transnational crime. For this reason, intensive international cooperation is needed in overcoming transnational crimes in order to protect Indonesia's national interests and sovereignty.

### *C. The Impact of Illegal Fishing on Indonesia's Sovereignty and Global Security*

Recently, illegal fishing has become a means of entry for other crimes and transnational organized crime. Fishery activities related to transnational crimes include human trafficking, people smuggling, illegal drugs, corruption and piracy. It does not only have an impact on Indonesia but has global implications. Illegal fishing activity relationship with TOC and other crimes also occur in several other countries. Environmental Justice Foundation (EJF) and Green Peace have also conducted studies in West Africa, sub-Antarctic waters, Samoa, and Thailand. The crew of the boat were IUU Fishing subjected to physical and mental abuse, murder, being slaves without sleeping or eating, being unpaid and being victims of human trafficking. Here we can see that there have been human rights violations in the practice of IUU fishing.

In this case, according Indonesian government IUU fishing is not only about stealing fish and endangering food security, but also having a negative impact on the economy, damaging the environment, and violating human rights. IUU fishing is not only a national problem but also a global enemy, so an international contribution is needed to solve it.

In addition, the impact of IUU fishing also affects climate change which causes fisheries to be scarce which then has an impact on the survival of marine life and has an impact on the economic sector, especially for small fishermen on the coast. This multi-sectoral impact is proof

that IUU fishing is not only a problem for coastal countries but is a global security issue whose impact also affects climate change around the world.

#### ***D. Illegal Fishing Law Enforcement in Indonesia***

In this case, the Indonesian government, the Ministry of Marine Affairs and Fisheries, has taken preventive and repressive steps in dealing with illegal fishing. This preventive step start from supervision. Supervision is conducted through hard structure and soft structure approach, starting from upstream to downstream. The hard structure Approach conducted by examining permit documents, monitoring the position and movement of fishing vessels using the vessel monitoring system (VMS) facility, conducting surveillance operations at sea either independently or in collaboration with other law enforcement institutions (TNI-AL POLAIR, TNI-AU, etc.). Meanwhile, the soft structure approach conducted through several efforts, including collaborating with various Ministries / Agencies, bilateral / international cooperation, ratification of international conventions, being active in international organizations (such as RPOA).

Meanwhile, repressive measures are the process of handling illegal fishing crimes. The handling of violations is conducted against the perpetrators of criminal acts in the maritime and fisheries sector, especially against the perpetrators of activities IUU fishing. The handling of these violations is conducted systematically by law enforcers within the framework of the Criminal Justice System (CJS), where the Directorate General of PSDKP through the Fisheries Civil Servant Investigator (PPNS) conducts investigations up to the stage of submission to the Prosecutor (P21). This is based on the authority regulated in fisheries law.

The Ministry of Maritime Affairs and Fisheries also collaborates with the Ministry of Foreign Affairs in terms of diplomacy for handling IUU fishing. Several policies taken by the Ministry of Marine Affairs and Fisheries from 2014 to 2017 can be seen in Table 1.

**Table 1. Indonesian Policies concerning Fisheries (2014-2017)**

Year	Policy
2014	<ol style="list-style-type: none"> <li>1) Moratorium for ex-foreign vessels (Permen-KP 56/2014)</li> <li>2) Analysis and evaluation of 1,132 ex-foreign ships</li> <li>3) Prohibition on <i>Transshipment</i> (Permen-KP 57/2014)</li> <li>4) Establishment of IUU Fishing - KKP Gahtas Task Force (Permen-KP 3A / 2014, 26A / 2014 updated with Permen-KP 126/2015)</li> </ol>
2015	<ol style="list-style-type: none"> <li>1) Establishment of a Task Force to Eradicate Illegal Fishing (Satgas 115)</li> <li>2) Prohibition of using trawls and seine nets (Permen-KP 02/2015)</li> <li>3) Shipwreck</li> <li>4) Strengthening coordination with TNI-AL, Water Police, Director General of Taxes and PPATK</li> <li>5) The adoption of corporate crime and the multi-legal regime approach.</li> <li>6) Imposition of administrative sanctions (based on the findings of the Analysis and Evaluation)</li> </ol>
2016	<ol style="list-style-type: none"> <li>1) A road map for improving capture fisheries governance.</li> <li>2) Prohibition of foreign, ex-foreign vessels and foreign investment in capture fisheries</li> </ol>
2017	<ol style="list-style-type: none"> <li>1) Improved licensing governance</li> <li>2) Shift from environmentally unfriendly fishing gear to environmentally friendly</li> <li>3) Analysis and Evaluation of Indonesian Fishing Vessels (Phase II of Improvement)</li> </ol>

*Source: Various Data, analyzed by Authors*

From the implementation of these policies, it turns out that our law enforcers still encounter many obstacles and difficulties in investigating fisheries crimes which have become transnational crimes. In this case, law enforcers must have the ability to detect, respond to and punish the perpetrators of transnational crimes related to IUU fishing.

#### ***E. Illegal Fishing as a Transnational Crime According to International Law and National Law***

Transnational crime is a form of crime that poses a serious threat to global security and prosperity considering its nature that involves various countries. The United Nations Convention on the Law of the Sea (UNCLOS) 1982 did not explain in detail regarding this illegal fishing. So that in handling it requires cooperation by interested countries



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by still referring to existing international rules and / or conventions. The enforcement of the laws and regulations of the coastal State is affirmed in article 73, namely:

- 1) The coastal State may, in exercising its sovereign rights to explore, exploit, conserve and manage biological resources in the exclusive economic zone take such actions, including boarding a ship, examine, arrest and conduct judicial proceedings, as necessary to ensure compliance with laws and regulations which are enacted in accordance with the provisions of this Convention.
- 2) The ship which was caught and the crew must be released immediately after being given an appropriate security deposit or other form of security.
- 3) The penalties of the coastal State imposed for breaking of the laws and regulations on fisheries in the exclusive economic zone shall not include withdrawal, in the absence of an otherwise treaty between the States concerned, or any other form of corporal punishment.
- 4) In the case of the arrest or detention of a foreign ship the coastal State shall immediately notify the flag State, by appropriate channels, of the action taken and of any penalties subsequently imposed.

To tackle this crime, a multilateral mechanism was created through an international agreement called the United Nations Convention against Transnational Organized Crime (UNTOC). UNTOC, which was formed in 2000, had become a basic guide for countries in efforts to combat transnational crime. Then, the question arises, why is illegal fishing a transnational crime? It turns out that in reality, illegal fishing is not only a single crime but is related to other crimes that is fishing crimes, such as immigration (human smuggling, falsification of immigration documents), customs and excise crimes, tax crimes, illegal petroleum transactions, criminal acts of corruption, violations of human rights (forced labor, human trafficking), money laundering and drug smuggling. Article 3 paragraph (2) UNTOC also explains that the elements of transnational crime are as follows:

- 1) Performed more than one territorial territory of a country;
- 2) The crime was controlled, prepared, directed and planned in one particular country, but the execution of the crime was committed in a different country;

- 3) A crime which was committed within the territory of one country, but involved an individual or an organized group committing a crime in another country; or
- 4) Crimes committed in one country, but the result of these crimes befallen other countries.

From this explanation, it can be seen that IUU Fishing has fulfilled these elements to be categorized as a transnational crime. Meanwhile, the modus operandi used by the IUUF actors includes:

- 1) Document falsification;
- 2) Double flagging and double registered;
- 3) Catching fish without a permit and or not equipped with an SPB / SLO;
- 4) Modify ships without permission (mark down, replace call sign, engine);
- 5) Using foreign skipper and crew;
- 6) Registering foreign pumpboats as Indonesian ships, as well as falsifying the residence documents of the crew members;
- 7) Turn off the transmitter when (VMS / AIS);
- 8) Transshipment Illegal At sea;
- 9) Falsifying Reports logbook, LKP and LKU;
- 10) Fishing ground violation;
- 11) Using illegal fishing gear;
- 12) Do not own or partner with a Fish Processing Unit; and
- 13) Do not land fish at the port of base.

IUU fishing as a transnational crime is regulated in international legal mechanisms and national law. Some of the rules or international conventions governing IUU fishing are:

- 1) United Nations Convention on the Law of the Sea (UNCLOS) 1982 Convention on the Law of the Sea / United Nations (UN), 1982;
- 2) Food and Agriculture Organization Compliance Agreement 1993;
- 3) United Nations Implementing Agreement 1995;
- 4) Code of Conduct For Responsible Fisheries 1995;
- 5) International Plan of Action to Prevent, Deter and Elimination Illegal, Unreported and Unregulated Fishing 2001 (IPO on IUU Fishing 2001).

Meanwhile, transnational crimes related to illegal fishing are regulated in the United Nations Convention against Transnational Organized Crime (UNTOC) 2000. So

these rules are interrelated with one another. Indonesian national law also regulates illegal fishing, these rules include:

- 1) Law of the Republic of Indonesia Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone;
- 2) Law of the Republic of Indonesia Number 21 of 1992 concerning Shipping;
- 3) Law of the Republic of Indonesia Number 6 of 1996 concerning Indonesian Waters;
- 4) Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries;
- 5) Law of the Republic of Indonesia Number 45 of 2009 concerning Amendments to Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries

In dealing with illegal fishing, the Ministry of Marine Affairs and Fisheries as the institute in charge of maritime affairs and fisheries has used its authority based on these regulations. For example, the sinking of foreign vessels conduct illegal fishing has been mandated in the Fisheries Law (Law Number 31 of 2004 in conjunction with Law Number 45 of 2009) which reads:

Article 69 paragraph (3):

Fishery control vessels can stop, inspecting, carrying, and detaining ships that are suspected or reasonably suspected of committing violations in the Indonesian Fish Cultivation Territory to the nearest port for further processing.

Article 69 paragraph (4):

In carrying out the functions as referred to in paragraph (1), fisheries investigators and / or supervisors can take special actions in the form of burning and / or sinking fishing boats with foreign flags based on sufficient initial evidence.

#### **4. CONCLUSION**

This research concluded that the policy of sinking foreign ships carrying out illegal fishing is a special measure of destroying evidence. This extermination can be carried out by burial, burning, drowning, and exploding. This step is performed to create a deterrent effect (deterrent) that does not happen again IUU fishing in the waters of IUU fishing can be categorized in transnational crimes because they meet the elements required by Article 3, paragraph (2) UNTOC 2000 that performed more than their own territory , the crime is controlled, prepared, directed and planned in

one particular country, but the execution of the crime is committed in a different country, the crime is committed in one territory of the country, but involves individuals or organized groups who commit crimes in another country or crimes committed in one country. Furthermore, the result of these crimes befell other countries. Illegal fishing that occurs in Indonesia has harmed Indonesia politically, economically, socially, ecologically and in defense and security. Therefore, it must be handled intensively to maintain state sovereignty and ensure the welfare of citizens from the fisheries sector.

## 5. DECLARATION OF CONFLICTING INTERESTS

Author 1 is in charge of collecting field data, Author 2 is in charge of formulating the summary, analyzing the data, and so on. There is no potential conflict of interest in the research, authorship, and/or publication of this article.

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## Quote

“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.”

*Achim Steiner*

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