


Determination of the Jurisdiction of Fisheries Crimes as Transnational Organized Crime



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ABSTRACT. The abundance of fisheries resources in Indonesian waters has made Indonesia a target of crime in the field of fisheries, this has an impact on the welfare and prosperity of the Indonesian people, especially local fishermen, the government continues to push this fisheries crime to be recognized as a type of organized transnational crime. This study aims to find out and analyze how Fisheries Crime Arrangements and the Determination of Fisheries Crime Jurisdictions are based on the provisions of organized transnational crime conventions. The research method used in this research is Normative Law Research with a legal approach, conceptual approach. And use the theory of determining the location of the crime (*Locus delicti*) in determining the jurisdiction of fisheries crimes. Research results show that (1) Regulations related to Fisheries Crimes both materially and formally in Indonesian law have been regulated according to the perspective of organized transnational crime, however, current fisheries laws do not cover all existing fisheries crimes. (2) in the case of determining the jurisdiction of fisheries crimes occurring in the territory of a country involving several state parties, the States parties must establish a joint investigation body. The conclusion of this research is that the laws and regulations owned by Indonesia related to Fisheries Crimes do not cover all aspects of crimes occurring in the field of fisheries and related to the determination of the jurisdiction of fisheries crimes the Indonesian government has implemented its jurisdiction based on the provisions of transnational organized crime conventions by cooperating with state parties the other.

KEYWORDS. Fisheries Crimes, Indonesia Water Territory, Organized Transnational Crimes

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Introduction

Indonesia as an archipelago is one of the countries with the largest and most islands in the world consisting of 17,508 islands with a coastline of 81,000 Km and an area of about 3.1 million km² (0.3 million km² of territorial waters and 2.8 million km² of archipelago waters) or 62% of its territorial area. A wide and rich marine species and fishery potential, where fishing potential in the field of fishing is 6.4 million tons / year, general fishery potential is 305,650 tons / year and marine potential is approximately 4 billion USD / year. Capture fisheries products in Indonesia in 2007 were 4,924,430 tons¹. The importance of the sea in international relations has also led to the importance of the meaning of international sea law, the purpose of this law is to regulate the dual use of the sea, namely as a highway and source of wealth and power. Because the sea can only be used with special vehicles, namely ships, the sea must also determine the status of these ships. In addition, the law of the sea must also regulate competition between countries in seeking and using the wealth provided by the sea, especially between developed and developing countries². Indonesia's potential is an opportunity

¹ Supriadi & Alimudin, *Hukum Perikanan di Indonesia*, Jakarta: Sinar Grafika, 2012, pp. 1-2.

² Boer Mauna, *Hukum Internasional Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*. Bandung: P.T Alumni., 2013, pp. 307-308.

and economic potential that can be utilized for the advancement of the Indonesian economy, as well as the backbone of national development³. The abundance of fishery resources in Indonesian marine waters has apparently attracted the attention of foreign parties to also be able to enjoy it illegally through illegal fishing activities⁴. According to Divera Wicaksono, as quoted by Lambok Silalahi, illegal fishing is using a fake fishing license (SIPI), not equipped with SIPI, the contents of the permit document are not in accordance with the ship and the type of fishing gear, fishing with prohibited types and sizes⁵.

Whereas in reality, fisheries crime also has links to other transnational crimes in the context of UNTOC. The territory of Indonesian fisheries law covers national waters, ranging from territorial sea, inland sea, sea of islands to the sea of the Indonesian Exclusive Economic Zone (EEZ). In the ZEEI region, Indonesia has sovereign rights which include management of fish resources. Indonesian national law extends to regulations in this region, the Government of Indonesia has the right to regulate the management of fish resources, including matters of an administrative nature, for example regarding licensing. But Indonesia only has sovereign rights in the ZEEI region, so the application of national law in this region also needs to pay attention to applicable international law⁶.

Another problem arises when fisheries crimes that occur in the high seas require law enforcement officials to carefully determine the application of laws that can ensnare the perpetrators, because this is related to foreign nationals who commit crimes, and the Indonesian government must also comply with international legal regulations. applicable. Sovereignty to regulate everything that happens in the territorial territory is an authority that is owned by each country. This authority includes: determining the provisions of the Law and enforcing its national Law on all things that harm the country, this authority is called National jurisdiction in International Law. Various laws and regulations owned by Indonesia related to the practice of

³ Belardo Prasetya Mega Jaya, *Tindak Penegakan Hukum Terhadap Kapal Asing Yang Melakukan Illegal Fishing di Wilayah Pengelolaan Perikanan Indonesia*. Skripsi. Fakultas Hukum, Universitas Lampung, 2016, p. 2.

⁴ Simela Victor Muhamad, *Illegal Fishing Di Perairan Indonesia: Permasalahan dan Upaya Penanganannya Secara Bilateral Di Kawasan*. *Jurnal Politica*. Volume 3, (1), 2012, pp. 59-85.

⁵ Tunggal, Arif Johan, *Pengantar Hukum Laut*, Jakarta: Harvarindo., 2013, p. 25.

⁶ Marhaeni Ria Siombo, *Hukum Perikanan Nasional dan Internasional*. Jakarta: PT. Gramedia Pustaka Utama, 2010, p. 24.

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fisheries crime must be reiterated criminal penalties bearing in mind that many foreign vessels caught in Indonesian waters are taking the results of our marine resources, considering that Indonesia is one of the countries with stable waters. supported by the strengthening of national law in relation to eradicating crime in fishing which not only harms Indonesia but also the international community. Cooperation from all parties is needed in overcoming the crime of the marriage. Considering that the perpetrators of fishery crimes in carrying out their mode of operation are using stateless vessels, using fake flags and falsifying ship documents and crew members who make it difficult for law enforcement officials to inspect.

In the Geneva convention of 1985 governing sovereignty and state jurisdiction at sea, the regulation includes rules on territorial sea, additional zones and zones of fisheries and conservation of biological resources in the high seas, the convention is considered to be still relevant to regulate all human activities at sea⁷. Based on the above problems, it shows that Fisheries Crimes need serious handling and cooperation from various countries to eradicate these fisheries crimes together, so that comprehensive regulation and appropriate jurisdiction are needed in combating Fisheries Crimes, this is a priority because it makes it easier law enforcement for perpetrators and also facilitate law enforcement officials to coordinate with each other in overcoming this problem. Thus the author takes the title of the study, namely "Determination Of The Jurisdiction Of Fisheries Crimes as Transnational Organized Crime".

Problem Formulations in this Research are: (1). What is the regulation of fisheries crime in Indonesian waters in the perspective of organized transnational crime? (2). How is the determination of the jurisdiction of fisheries crimes based on the United Nations Convention Against Transnational Organized Crime (UNTOC) 2000?

The objectives of this research are: (1) Explain the regulation of fisheries crime in national law and international law that can be used to eradicate fisheries crimes that occur in Indonesian waters. (2). Explain the procedure for determining the jurisdiction of Fisheries Crimes Based on the "United Nations Convention Against Transnational Organized Crime" Convention. in order to eradicate fishing crimes that occur in the territorial waters of Indonesia.

⁷ Mochtar Kusumaatmadja, and Etty R. Agoes, *Pengantar Hukum Internasional*, Bandung: P.T. Alumni, 2015, p.170.

This paper analyzes the fisheries crimes in limitation on how to determine this case as transnational organized crime? Therefore, author used the theory of occurrence of crime (*Locus Delicti*). Provisions regarding the location of the crime are needed to determine whether the Indonesian Criminal Law can be applied and also which court is competent to try the person who committed the crime. To prosecute someone in court related to a crime, one must pay attention to the time and place and the occurrence of the crime⁸. To determine the locus delicti there are 3 (three) theories, namely :

1. Theory of Material Action (physical deeds)

In this theory, which is considered as a place where a crime occurs is the place where the act was committed.

2. Instrument Theory (tool)

In this theory the place of a crime is the place where this tool works and gives rise to the consequences of a crime

3. Theory of Effect

In this theory, which is considered a place where a crime occurs is where the consequences of the crime occur.

Method

The research is Normative Legal Research, with the Legislative Research Approach, Conceptual Approach, and using the theory of determining the location of crime (*Locus delicti*) in determining the jurisdiction of fisheries crimes. Data collection techniques that are processed in this research are using literature study techniques, namely by collecting various statutory provisions, documentation, collecting literature, and accessing the internet relating to problems in the scope of international law⁹. The data analysis technique used in this study is qualitative analysis, which describes the data in quality in the form of regular, concise, logical, non-overlapping, and effective sentences, so as to facilitate data interpretation and analysis¹⁰.

Data validity method used in this research is triangulation of data sources, triangulation is defined as data collection techniques and data

⁸ Sudarto, *Hukum Pidana I Edisi Revisi*. Semarang: Yayasan Sudarto Fakultas Hukum UNDIP Semarang, 2009, pp. 60-62

⁹ Soerjono Soekanto, & Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta: PT Raja Grafindo Persada, 2009, p. 41.

¹⁰ Muhammad, Abdulkadir, *Hukum dan Penelitian Hukum*, Bandung: Citra Aditya Bakti, 2004, p. 127.

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sources that already exist. If the researcher collects data with triangulation, then the researcher actually collects the data and at the same time tests the credibility of the data, that is checking the credibility of the data with various data collection techniques and various data sources¹¹.

Regulation of Fisheries Crimes in the Perspective of Organized Transnational Crime

A. Regulation of Fisheries Crimes in the Perspective of Organized Transnational Crime

Indonesia has ratified the United Nations Convention Against Transnational Organized Crime as stipulated in the Law of the Republic of Indonesia Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime and the United Nations Convention on the Law of the Sea contained in Republican Law Indonesia Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea, so that Indonesia as a state party has the authority to take action against the perpetrators of fisheries crimes by implementing national legal jurisdiction in the Indonesian jurisdiction. Seeing the condition of the waters and biodiversity Indonesia is one the country which is the target of crime in the field of fisheries, this has an impact on the welfare and prosperity of the people of Indonesia. The large number of fisheries crimes committed in the territorial waters of Indonesia cannot be separated from the weak supervision of law enforcement officers and the legal system in Indonesia. fisheries crimes also have links to other transnational crimes in the UNTOC context. The territory of Indonesian fisheries law covers national waters, ranging from territorial sea, inland sea, sea of islands to the sea of the Indonesian Exclusive Economic Zone (EEZ). In the ZEEI region, Indonesia has sovereign rights which include management of fish resources. Indonesian national law extends to regulations in this region, the Government of Indonesia has the right to regulate the management of fish resources, including matters of an administrative nature, for example regarding licensing. but Indonesia only has sovereign rights in the ZEEI region, so the application of national law in this region also needs to pay attention to applicable international law.

¹¹ Sugiyono, *Metode Penelitian Kuantitatif Kualitatif dan R & D*. Bandung: Alfabeta, 2018, p. 241.

Discussing the regulation of crime in the field of fisheries, especially in the perspective of organized transnational crime, the main study is the United Nations Conventions Against Transnational Organized Crime (UNTOC) and Law Number 45 of 2009 Concerning Fisheries, but also not limited to statutory regulations the other. However, seeing the chosen topic related to organized transnational crime that occurred in the field of fisheries, it is clear that the study in this study uses that law namely the United Nations Conventions Against Transnational Organized Crime (UNTOC) of 2000 and Law Number 31 of 2004 Jo Number 45 of 2009 concerning fisheries. The reason for the use of these laws is to see how the regulation related to organized transnational crime, whether this fishery crime has fulfilled the elements that can make this fishery crime categorized as an organized transnational crime and see how the regulation of law number 45 of 2009 concerning This fishery is related to fishery crime.

B. Criteria of Transnational Organized Crime

This convention related to organized transnational crime aims to promote cooperation to prevent and eradicate transnational organized crime effectively, in this convention also explained that organized criminal group "*means a structured group consisting of three or more people, formed in one period time and act in an integrated manner with the aim of committing one serious or more serious offense established in accordance with this Convention, to obtain, directly or indirectly, financial or other material benefits*". Explanation of serious crime here is a crime that is punishable by imprisonment of at least 4 years or a more severe sentence. In Article 3 paragraph (2) the United Nations Convention Against Transnational Organized Crime explains that a crime is Transnational if it meets the following elements¹² :

- a. Conducted in more than one country
- b. It is carried out in one country, but the preparation, instruction and control are carried out in another country.
- c. It is carried out in one country but involves a group of organized criminals who are involved in criminal activities in more than one country.
- d. Performed in one country but has a major effect in another.

¹² Article 3 paragraph (2) *United Nations Convention Against Transnational Organized Crime (UNTOC)* of 2000.

Arrangement of National Legislation which is relevant to the elements of Organized Transnational Crimes related to Fisheries Crime

Article in the National Laws relevant to the Criminal Elements of Fisheries based on the United Nations Convention Against Transnational Organized Crime:

a. Conducted in more than one country

These fisheries crimes are carried out in various places in different regions of the country to complicate the tracking of these fish theft crimes, fisheries crimes meet the first element that is "committed in more than one country" in the category of transnational crime because the crime is committed in more than one country with a network criminals from various countries. The following are the Regulations that can meet the first elements of organized transnational crime related to Fisheries Crimes:

1. Article 85 of Law Number 45 Year 2009 Concerning Fisheries: using fishing gear that is prohibited from illegal fishing,
2. Article 84 Paragraph (1) of Law Number 31 Year 2004 Concerning Fisheries: the use of hazardous chemicals.
3. Article 86 Paragraph (1) of Law Number 31 Year 2004 Concerning Fisheries: Pollution / Destruction of Fish Resources
4. Article 88 of Law Number 31 Year 2004 Concerning Fisheries: Issuing / importing, circulating fish outside the Indonesian fisheries management area.

b. Conducted in one country but an important part of the preparation, planning, direction or control activities occur in another country

1. Article 92 of Law Number 31 Year 2004 concerning Fisheries: must have a SIUP (fishery business permit)
2. Article 84 Paragraphs (2), (3), (4) of Law Number 31 Year 2004 Concerning Fisheries: involvement of the Captain, crew, ship owner, fishing company owner who catches fish with hazardous chemicals
3. Article 93 of Law Number 45 Year 2009 Concerning Fisheries: must have SIPI (Fishing License)
4. Article 94 of Law Number 31 Year 2004 Concerning Fisheries: must have a SIKPI (Permit for fishing vessels)
5. Article 94 A of Law Number 45 Year 2009 Concerning Fisheries: Falsification of documents (SIUP, SIPI and SIKPI)

6. Article 103 of Law Number 45 Year 2009 Concerning Fisheries: criminal offenses committed by corporations demands and sanctions plus 1/3 of the sentences handed down.
- c. It is carried out in one country but involves a group of organized criminals who are involved in criminal activities in more than one country
 1. Article 22 of the Minister of Maritime Affairs and Fisheries Regulation of the Republic of Indonesia Number 42 PERMEN-KP / 2016: regulates the sea work agreement for ship crews, and the obligation to fulfill the basic rights of fishing companies for ship crews (Health, decent salary, work according appropriate time and effort) and prohibitions on engaging in transnational organized crime activities for the crew
 2. Article 70 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number PER.30 / MEN / 2012: Illegal Transshipment
- d. Performed in one country but has a major effect in another
 1. Article 12 Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 42 / PERMEN-KP / 2015 Regarding Vessel Monitoring System: Regarding Vessel Monitoring System the obligation to install vessel transmitter equipment
 2. Article 3 Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 7 of 2019: obligation to install and activate AIS (Automatic Identification System), Administrative Sanctions
 3. Article 9 Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 7 of 2019: Administrative Sanctions if the vessel transmitter is not activated when sailing.
 4. Article 70 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number PER.30 / MEN / 2012: Illegal Trans-shipment.

Determination of Fisheries Crime Jurisdiction in the Indonesian Water Territory

A. Determination of Fisheries Crime Jurisdiction in the Indonesian Water Territory

The application of Jurisdiction becomes a matter of International Law if in a case found a foreign element / is related to other countries. In the case of the case: Thailand-flagged Silver Sea 2 Vessels carrying out illegal trans-shipment activities in Papua New Guinea from catches made in Indonesian territorial waters. This case concerns 3 (three) countries, namely Thailand as a flagship country, Papua New Guinea whose territory is used as an illegal trans-shipment place and Indonesia whose territory is used by the perpetrators to catch their fish. All countries claim to have jurisdiction over the perpetrators of fisheries crimes, but there is only one State that can prosecute perpetrators because a crime cannot be tried twice with the same case. The country where the perpetrator was arrested has the greatest opportunity to apply his jurisdiction, however it is not certain that the country will apply his jurisdiction. Because the perpetrators were arrested in the Indonesian territorial waters and the crimes committed were regulated in a National Law, the Indonesian Government must try them.

In implementing jurisdiction, the Government of Indonesia must pay attention to the location of the crime (*locus delicti*), *Locus delicti* is the location or place, that is the enactment of criminal law in terms of the location of the crime. The determination of this *locus delicti* serves to determine whether Indonesian criminal law applies to the criminal act or not, determine which court has the authority to try the case and as an absolute requirement for the indictment of the indictment.

To determine the location of a crime (*locus delicti*) there are 3 (three) theories, namely :

b. Theory of Material Action

According to this theory, the *locus delicti* is the place where the crime was committed.

c. Instrument Theory (tool)

According to this theory, the *locus delicti* must be the place where the crime occurred.

d. Theory of Effect

According to this theory, what must be / is considered as a place where a crime (*locus delicti*) is where the consequences of the crime occur.

The Unitary State of the Republic of Indonesia as an archipelago nation characterized by the archipelago has sovereignty over its territory and has sovereign rights outside its sovereign territory and other authorities, to be managed and utilized as much as possible for the welfare and prosperity of the Indonesian people. Article 1 paragraph (3) of the Law of the Republic of Indonesia Number 43 Year 2008 states that: Jurisdiction Region is an area outside the territory of the State consisting of: Exclusive Economic Zones, Continental Shelf, and Additional Zones where the state has sovereign rights and authority certain other as regulated in statutory regulations and International Law. Regarding the authority to adjudicate related to fisheries crimes, In Article 71 A of Law Number 45 Year 2009 Concerning amendment to Law Number 31 of 2004 concerning Fisheries it is explained that the Fisheries Court has the authority to examine, try and decide cases of criminal acts in the fishery sector that occurred in the territory of the Republic of Indonesia Fisheries Management, both conducted by Indonesian citizens and foreign nationals. The Fisheries Court here is a special court within the scope of the General Judiciary which is domiciled in the District Court.

Vessels that enter the territorial waters of a country, then the state of the ship is under the jurisdiction of the country concerned. In fact the foreign ship itself has an expanded jurisdiction or what is commonly called an extra jurisdiction that is fully in force on the ship itself. However, with the entry of ships into a country's territory, namely in ports and in inland waters, the extra-territorial jurisdiction owned by a foreign ship has changed into pseudo jurisdiction or known as "quasi-territorial". With the entry of a foreign ship into the inland waters of a country or a port of a country, then two jurisdictions conflicting with their position, namely the coastal state has full territorial jurisdiction while the flag state of the ship has a territorial quasi jurisdiction. Thus, jurisdiction in inland waters and in ports, the highest authority of that authority lies with the coastal states. The basic consideration is that the position of the coastal state is stronger because it can apply the law. State flag jurisdiction or quasi-territorial jurisdiction owned by foreign vessels due to the application of the extra-territorial principle can be applied to the following conditions: 1) Entry of ships in inland waters due to an

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emergency (entry in distress), 2) Criminal acts constitute disciplinary violations¹³.

Determination of this jurisdiction becomes important when this transnational organized crime that has a broad dimension with the area of crime operations covering various countries that have an impact on the two countries or more allows these countries where crime occurs can apply the jurisdiction of their respective countries. However, in the process, there are often disputes over the authority to adjudicate the perpetrators of these countries. In UNTOC 2000 and UNCLOS in 1982, it was arranged about the resolution of the disputed authority issues.

In determining the jurisdiction of a country's authority the rule of law is needed to regulate it specifically for crimes with transnational or cross-border dimensions, Indonesia has ratified the United Nations Conventions Against Transnational Organized Crime of 2000 which is then contained in Law Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime (United Nations Convention Against Organized Transnational Crime) so that Indonesia has the authority to prosecute transnational crime perpetrators in its jurisdiction. Indonesia has also ratified the 1982 United Nations Convention on the Law of the Sea as stipulated in Law Number 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea (this convention of the United Nations Concerning the Law of the Sea), this makes Indonesia which is a state party may apply national law in its jurisdiction.

A. Determination of Jurisdiction Based on the United Nations Convention on Transnational Organized Crime (UNTOC) 2000

Transnational crime is a global issue that is a challenge for every country, especially with the increase in the quality and quantity of crime. The increasingly complex challenges can only be overcome by increasing diplomatic efforts to form cooperation between countries, especially in the field of law. Forming legal cooperation with other countries will increase the range of international criminal law capabilities. Legal cooperation is the most effective effort to eradicate transnational crime. The importance of establishing legal cooperation is reflected in multilateral legal instruments

¹³ Yasin Tasyrif, Peraturan Perluasan Yurisdiksi Pidana Di Suatu Wilayah Negara. *Jurnal Hukum & Pembangunan*. Volume 30 (1), 2000, pp. 7-19.

that always mandate each country to establish cooperation with other countries in the prevention and eradication of transnational crime, such as the United Nations Convention on Transnational Organized Crimes (UNTOC) and the United Nations Convention Against Corruption (UNCAC).

The Indonesian sea which is rich in fish resources, is a target for fisheries criminals, the lack of supervision from law enforcement apparatuses triggers the rise of illegal fishing activities in Indonesia. Cooperation from all parties is needed in overcoming the crime of the marriage. Considering that the perpetrators of fishing crimes in carrying out their mode of operation are using stateless vessels, using fake flag flags and falsifying ship documents and crew members who make it difficult for law enforcement officials to inspect. Each state has sovereignty to regulate everything that happens in its territorial territory. As an implementation of sovereignty, the State has the authority to establish legal provisions and to enforce or determine its national legal provisions for events, wealth and deeds. This authority is referred to as State jurisdiction in international law. Various laws and regulations that are owned by Indonesia related to fisheries crime practices must be reiterated criminal sanctions given the large number of foreign vessels caught in Indonesian waters are taking the results of our marine wealth, Considering Indonesia is one of the countries with vast territorial waters, this must supported by the strengthening of national law in relation to eradicating crime in fishing which not only harms Indonesia but also the international community. Cooperation from all parties is needed in overcoming the crime of the marriage.

Determination of this jurisdiction becomes important when this transnational organized crime that has a broad dimension with the area of crime operations covering various countries that have an impact on the two countries or more allows these countries where crime occurs can apply the jurisdiction of their respective countries. However, in the process, there are often disputes over the authority to adjudicate the perpetrators of these countries, in Article 4 of the United Nations Convention Against Transnational Organized Crime (UNTOC), it is explained about the protection of the sovereignty of a state party in upholding its legal authority in the sovereign territory of a state party. Article 4 contains¹⁴:

¹⁴ Article 4 *United Nations Convention Against Transnational Organized Crime (UNTOC)* of 2000.

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1. States parties must carry out their obligations based on the principles of equal sovereignty and territorial integrity of the countries and the principle of not intervening in the internal problems of other countries.
2. Nothing in this convention grants the right to a state party to take action within the territory of the other state to exercise jurisdiction and carry out functions that are only held by competent authorities of the other state under its national law.

In this article it is explained that, for states parties that have ratified the United Nations Convention Against Transnational Organized Crime (UNTOC) must carry out their obligations to enhance international cooperation in the prevention and eradication of organized transnational crime, state parties must also comply with the principle of sovereignty in carrying out their obligations, and does not interfere in the internal affairs of other countries, in paragraph two also explained that in this convention expressly states that the other party does not have the right to take action or apply jurisdiction in the territory of the other party.

In Article 4 governing the protection of the sovereignty of a state party in implementing its jurisdiction, Article 15 of the UNTOC also explains the arrangement of the application of the state party's jurisdiction which may be required in connection with organized transnational crime.

Pursuant to Article 15, it can be understood that a state party may enforce its jurisdiction over this organized transnational crime if the crime was committed by a citizen of that state and the crime was committed by a citizen of the country of the party concerned or by a person who does not have a nationality. usually residing within the territory of the country concerned. It was also explained that the state party could enforce its jurisdiction. Related to the settlement of authority disputes that occur in handling transnational organized crime, has been regulated in the provisions of Article 35 of the United Nations Convention Against Transnational Organized Crime (UNTOC) of 2000, as follows¹⁵ :

1. States Parties shall endeavor to resolve disputes concerning the interpretation or implementation of this Convention through negotiations.
2. Any dispute between two or more States Parties concerning the interpretation or implementation of this Convention which cannot be resolved through negotiations within a reasonable time shall, at the request of one of the States Parties, be settled through arbitration. If, 6 (six) months

¹⁵ Article 35 of the *United Nations Convention Against Transnational Organized Crime (UNTOC) of 2000*

after the date of the request for arbitration, the States Parties cannot agree on the arbitration organization, one of the States Parties may submit a dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval or accession to this Convention, declare that it does not bind itself to paragraph (2) of this Article. (3) This other State Party shall not be bound by paragraph (2) of this Article for any State Party making such conditions.
4. Each State Party which makes the conditions in accordance with paragraph (3) of this Article may at any time withdraw the conditions through notification to the Secretary-General of the United Nations.

However, based on the Law of the Republic of Indonesia Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized crime, the Government of the Republic of Indonesia is not bound by the provisions of Article 35 paragraph (2) and holds that if there is a dispute due to differences in interpretation and application of the contents of the convention, which is not (as stipulated in paragraph (1) of this Article, can appoint the International Court of Justice only based on the agreement of the parties to the dispute.

Transnational organized crime often takes place in a broad dimension involving two or more countries where these transnational crimes occur, so good communication between countries is needed so that there is no dispute over authority to try perpetrators of transnational organized crime, in the case of the investigation process, prosecution or litigation Article 19 of the United Nations Convention Against Transnational Organized crime (UNTOC) of 2000 requires States parties to consider signing bilateral or multilateral agreements to establish joint investigative bodies in the case of investigation, prosecution or litigation related to crimes organized transnational events that occur in one or more countries, in Article 19 of UNTOC 2000 it is stated that¹⁶ :

"States Parties shall consider the signing of bilateral or multilateral agreements or arrangements relating to matters which are the subject of investigation, prosecution or litigation in one or more States, the relevant competent bodies may form bodies joint investigation agency. In the absence of agreement or arrangement,

¹⁶ Article 19 *United Nations Convention Against Transnational Organized Crime (UNTOC)* of 2000

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joint investigations can be carried out on a case-by-case basis. The States Parties involved must ensure that the sovereignty of the State Party whose territory will be used for investigation activities is fully respected ”.

In connection with fisheries crimes that occur in Indonesian territorial waters or that involve the jurisdiction of one or more than two countries under the United Nations Convention Against Transnational Organized Crime (UNTOC) of 2000 provides an explanation of the obligation for States parties to consider the signing of bilateral agreements or multilateral or arrangements in relation to matters that are subject to investigation, prosecution and litigation, and competent bodies may form joint investigative bodies relating to the handling of organized transnational crime, in the event that an agreement or arrangement regarding joint investigation is not reached may also be carried out on a case-by-case basis, the States Parties involved must ensure that the sovereignty of the State Party whose territory will be used for investigation activities is fully respected.

B. Determination of Jurisdiction Based on the United Nations Convention on the Law of the Sea (UNCLOS) 1982

In UNCLOS also regulates the territorial authority of coastal states in applying their laws, Article 2 UNCLOS explains the status of the territorial sea law, air space above the territorial sea and the layer of land beneath, which reads¹⁷:

1. The sovereignty of a coastal State, other than its land area and inland waters, and in the case of an archipelagic State with its archipelagic waters, also includes a sea lane bordering it which is called a territorial sea.
2. This sovereignty includes the air space above the sea and the seabed and the subsoil below.
3. Sovereignty over the territorial sea is carried out subject to this Convention and other regulations of international law.

In the explanation of Article 2 it can be understood that coastal states in their territorial waters (inland waters, archipelagic waters and territorial seas) can apply all of their legal regulations in the event of a crime in the

¹⁷ Article 2 *United Nations Convention on the Law of the Sea (UNCLOS)* of 1982

jurisdiction of the coastal state, including the application of criminal law against perpetrators of fisheries crimes. But to apply the criminal jurisdiction previously must meet the provisions in Article 27 paragraph (1) of UNCLOS which regulates criminal jurisdiction regarding law enforcement against foreign vessels committing criminal offenses and if it does not meet the provisions in Article 27 paragraph (1) UNCLOS then coastal states cannot enforce their jurisdiction.

The following is the sound of Article 27 of UNCLOS governing Criminal Jurisdiction on Foreign Vessels¹⁸ that Criminal jurisdiction of a coastal State cannot be carried out on a foreign ship crossing the territorial sea to arrest anyone or to conduct an investigation which is related to any crime committed on the ship during such passage, except in the following cases:

- a. if the consequences of the crime are felt in the coastal States;
- b. if the crime is of a kind that disturbs the peace of the State or territorial sea order;
- c. if the local authorities have requested assistance from the ship's captain by the diplomatic representative or consular official of the flag State or
- d. if such actions are needed to eliminate illicit trafficking of narcotics or psychotropic substances.

There are several important points for a coastal country to be able to apply its criminal jurisdiction in the territory of the coastal country concerned, which is the result of the crime committed that has a direct impact on the territory of the coastal country, this type of crime can disturb peace and disturb the stability of the security of the coastal state, the application of this criminal jurisdiction can be applied if requested by the local authorities or by the ship captain or diplomatic representative or consular officials of the flag state and the application of this jurisdiction can be applied if it relates to the eradication of drug trafficking crimes or psychotropic material.

The basis for resolving disputes concerning the granting of rights and jurisdiction in the Exclusive Economic Zone in UNCLOS is regulated in Article 59 which reads¹⁹:

"In the event that this Convention does not give rights or jurisdiction to a coastal State or to another State in an exclusive economic zone, and a dispute arises between the interests of the coast State and another State or any other State, the dispute must

¹⁸ Article 27 *United Nations Convention on the Law of the Sea (UNCLOS)* of 1982

¹⁹ Article 59 *United Nations Convention on the Law of the Sea (UNCLOS)* Year 1982

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be settled on the basis of justice and with consideration of all relevant circumstances, taking into account the respective interests involved for the parties as well as for the international community as a whole ".

If in the application of the criminal jurisdiction a dispute occurs between the coastal state and the flag state of the ship or any other State, the process of resolving the dispute must be carried out peacefully, as stated in Article 279 of UNCLOS Concerning the obligation to settle the Dispute peacefully. Mentioned that²⁰ :

"States Parties must resolve any dispute between them concerning the interpretation or application of this Convention in a peaceful manner in accordance with Article 2 paragraph 3 of the Charter of the United Nations and, for this purpose, must seek resolution in the manner indicated in Article 33 paragraph 1 of the Charter the".

Coastal countries are not justified to take any steps on a foreign ship crossing the territorial sea to arrest a person or conduct any investigations related to any crime committed before the ship enters the territorial sea, if the ship is on its way from a foreign port, only crossing territorial sea without entering inland waters.

In Article 73 of UNCLOS, there are several important points that explain the authority of coastal states in implementing their jurisdiction, namely²¹ :

1. Coast states can exercise their sovereign rights to explore, exploit, preserve and manage the conservation of living natural resources in the Exclusive Economic Zone, and law enforcement.
2. The captured ships and their crew must be released immediately after being given a proper security deposit.
3. Coastal countries may not impose a sentence of deprivation of liberty (Prison), unless there is an agreement governing in advance.
4. In the event of arrest and detention, it must immediately notify the flag state through the appropriate channels.

Based on this information, only coastal countries can apply their jurisdiction in the event of a criminal offense of Fisheries in the Exclusive Economic Zone whether committed by Indonesian Citizens (Citizens) or

²⁰ Article 279 *United Nations Convention on the Law of the Sea (UNCLOS)* Year 1982

²¹ Article 73 *United Nations Convention on the Law of the Sea (UNCLOS)* Year 1982

Foreign Citizens (Foreigners), explained also that there are no rules prohibiting coastal states to seizing and confiscating vessels resulting from fisheries crimes that occurred in the Indonesian Exclusive Economic Zone, if arrest and detention of perpetrators are committed, coastal states must immediately notify the flag states through diplomacy between the two countries in terms of mutual coordination and cooperation.

Conclusion

Based on the description outlined in the above discussion, conclusions can be drawn from the issues raised related to the Regulation of Fisheries Crimes in the territorial waters of Indonesia based on the Organized Perspective of Transnational Crime and Criminal Jurisdiction Determination based on the United Nations Against Transnational Organized Crime (UNTOC) 2000 which has been ratified through Law Number 5 of 2009, are the Arrangement of Fisheries Crimes in the Indonesian Water Territory from the perspective of organized transnational crime both materially and formally criminal has been regulated in Law Number 31 of 2004 Jo. Law Number 45 of 2009 Concerning Fisheries, Indonesia has ratified the UNTOC Convention through Law Number 5 of 2009 which can be used as a guideline in combating transnational organized crime. This Crime of Fisheries meets the element to be called an organized transnational crime but in its regulation the Fisheries Act currently cannot accommodate all types of Fisheries Crimes. It is also concluded that in terms of determining the Jurisdiction of Fisheries Crimes occurring in the Indonesian Water Territory, the Government of Indonesia has ratified the UNTOC Convention through Law Number 5 of 2009 which serves as a guideline for combating organized transnational crime and UNCLOS Convention through Law Number 17 of 1985, Application of Jurisdiction this becomes important when there is a case relating to another State, this determination serves to determine which Court has the right to hear related to the case and determine whether Indonesian criminal law applies to the criminal act.

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Quote

Environmental degradation, overpopulation, refugees, narcotics, terrorism, world crime movements, and organized crime are worldwide problems that don't stop at a nation's borders.

Warren Christopher