

CHAPTER III

THE DYNAMISM OF ILLEGAL, UNREPORTED, AND UNREGULATED (IUU) FISHING IN INDONESIA

In this chapter, the author will explain the dynamism of Illegal, Unreported, and Unregulated (IUU) fishing in Indonesia. As one of the biggest maritime countries in the world, Indonesia also has to deal with this issues. This chapter will explain the condition of Indonesia marine wealth and its relation toward IUU fishing. Besides, this chapter also argues about the dynamism of IUU fishing in Indonesia, the triggering factors, and the impact toward Indonesia.

A. Indonesian Marine Wealth and IUU Fishing

1. Indonesian Marine Waters

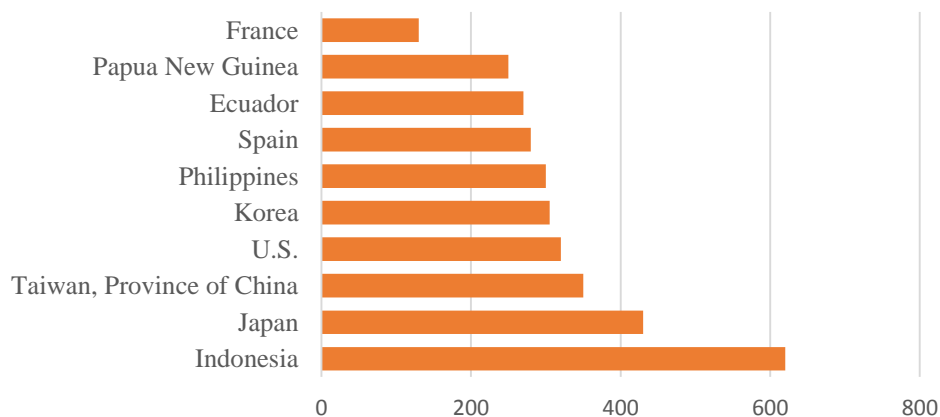
Indonesian marine wealth consists of the biological marine resources or fishery sectors in which various types of fish and plant natural resource in form of nickel, copper, tin, oil and gas exist. Besides, there are also other resources that have not been exploited yet from the natural power for instance ocean current, sea breeze, and geothermal at seabed. In addition, Indonesian marine sectors have a function as the producer and service providers for transportation, mineral mining, tourism, defense and security, and power production.¹

¹ Muhamad, S. V., 'Kejahatan Transnasional Illegal Fishing di Perairan Indonesia dan Upaya Penangannya secara Regional di Asia Tenggara', in *Journal of Supremasi Hukum*, 2014, p. 63.

In term of biological marine sector, Indonesia owns diverse types of fishes such like various types of fish, shrimp, crustaceans, mollusks, sea cucumbers, squid, tuna, skipjack, lobster, and etc. The diverse types of fishes in Indonesian marine have high economic value because the EEZ of Indonesia has warm waters throughout the years, so it becomes the fishing ground of many species of fishes. Referring to Indonesian marine resources, it becomes potential resources to increase national income. Moreover, recently global society puts their interest in consuming protein from the fresh fish that has Omega 3, 6, and 9 such like tuna.²

In addition, based on data reported to the world's regional fisheries management bodies, the top tuna-fishing nation is Indonesia, with total landings in 2014 of more than 620,000 metric tons.³ The figure below will show the diagram of total tuna landings in each countries.

Figure 3.1 Top 10 Tuna Fishing Nations in 2014



Source: *Estimate of Global Sales Values from Tuna Fisheries*. In A. R. Grantly Galland, *Netting Billions: A Global Valuation of Tuna* by Graeme Macfadyen., Philadelphia: The Pew Charitable Trust. p. 4

² James H. Tidwell, G. L., 'Fish as Food: Aquaculture's Contribution', in PMC's website, on 14 March 2016, <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1084135/>>, [accessed on 17 March 2017].

³ Grantly Gallad, A. R., 'Netting Billions: A Global Valuation of Tuna', in *The Pew Charitable Trust's website*, <<http://www.pewtrusts.org/en/research-and-analysis/reports/2016/05/netting-billions-a-global-valuation-of-tuna>>, [accessed on 17 March 2017].

From the chart above, it is explained clearly that Indonesia has more tuna than other countries. Thus, Indonesia should gain a lot of income from the fisheries sectors to cover the economic crisis that happen these days, but in fact it seems quite difficult to be true. One of the reasons why the exploration of fisheries and marine sectors is quite slow is because the government is only focused on the existing resource in the ground.⁴ This condition triggers other countries to exploit Indonesian waters, especially in fishery sectors through illegal action.

2. Illegal, Unreported, and Unregulated Fishing

a. Defining Illegal, Unregulated, and Unreported (IUU) Fishing

Illegal cross border fishing is the new phenomena for each maritime countries. It is a global problem which endangers the sustainability of fish stocks and marine ecosystem. The high tension as these activities makes United Nations under Food and Agriculture Organization (FAO) to put its concern seriously. Illegal, Unreported, and Unregulated Fishing or commonly known as IUU fishing is fishing activities that break the fisheries law or take place outside of the regulation that has been agreed.⁵

International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) defines the characteristic of IUU fishing. It is an instrument as a result of the 1995 FAO Code of Conduct for

⁴ Muhamad, S. V., 'Kejahatan Transnasional Illegal Fishing di Perairan Indonesia dan Upaya Penangannya secara Regional di Asia Tenggara', in *Journal of Supremasi Hukum*, 2014, p. 63.

⁵ Briley, J., 'FAQ: Illegal, Unreported, and Unregulated Fishing', in *The PEW Charitable Trust's website*, on 27 August 2013, <<http://www.pewtrusts.org/en/research-and-analysis/factsheets/2013/08/27/faq-illegal-unreported-and-unregulated-fishing>>, [accessed on 17 March 2017].

Responsible Fisheries applied to all states and all fisheries sectors. In the introduction section, IPOA-IUU⁶ examined the nature and scope of IUU fishing which will be discussed below:

- 1) Illegal fishing is fishing activities that:
 - a) are conducted by national or foreign vessel in water under jurisdiction of state, without the permission of the state, or in contradiction with the law and regulation;
 - b) in violation of the national law and regulation of visiting states, or international agreement; or
 - c) are conducted by vessels flying the flag of states that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization by which the states are bound or relevant provisions of the applicable international law.
- 2) Unreported fishing refers to fishing activities:
 - a) which have not been reported, or have been misreported, to the relevant national authority, or violate national legislation; or
 - b) placed in the region of RFMOs competence which have not been reported or have been misreported, not accordance with the reported procedure of RFMOs.

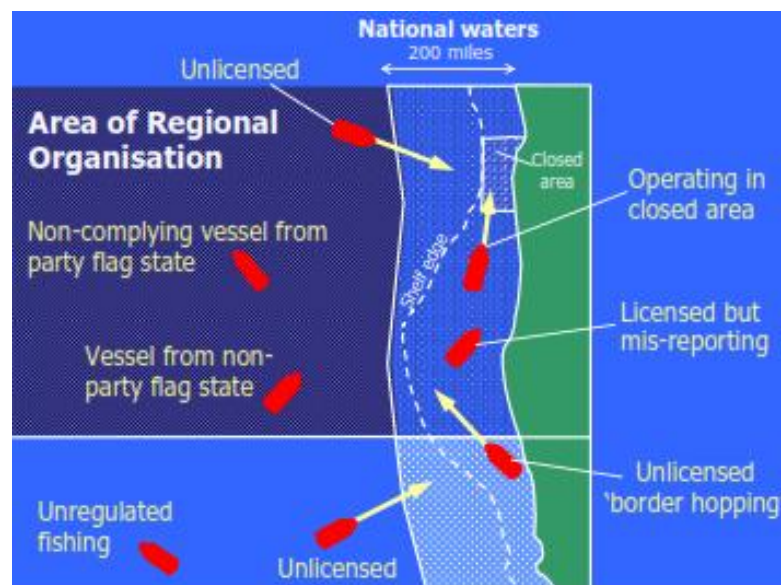
⁶ FAO, 'IPOA - International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing', in *FAO Corporate Document Repository's website*, on 14 March 2016, <<http://www.fao.org/docrep/003/y1224e/y1224e00.htm>>, [accessed on 17 March 2017].

3) Unregulated fishing refers to fishing activities:

- a) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with state responsibilities for the conservation of living marine resources under international law; or
- b) in the area of RFMOs authority, that conducted by vessels without nationality, or vessels flying flag of unregistered states within RFMOs, with the inappropriate manner or in contradiction with the conservation and management measures of that organization.

In order to have better understanding about Illegal, Unreported, and Unregulated (IUU) fishing, the illustration below will explain about it:

Figure 3.2 Illustration of Illegal, Unreported, and Unregulated (IUU) Fishing



Source: MRAG. (2005, 2005). Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries. London: DFID.

b. The Impact of Illegal, Unreported, and Unregulated (IUU) Fishing

The practice of IUU fishing will give negative impact for the commercial fisheries as well as the fish stocks in the ocean. It also addresses the impact in economic sectors, environmental, and social impact. In term of economy, the impact is derived through direct and indirect economic losses. Direct economic losses come from the value of the catches that should be granted by the coastal states or the other legal board. This creates direct losses to GNP and additional losses of revenues from foregone landings fees, license fees, taxes, and other levies that should be paid by the legal fisheries. This might get worse for the developing countries which have a high reliance on fisheries for domestic consumption and export earnings.⁷ A study in 2005 found that the elimination of illegal fishing could increase the GNP of Liberia for about 4%.⁸

In another side, the practice of IUU fishing also gives side effect on indirect economic losses. It is taken from the loss of income and employment in the supply chain of fisheries upstream and downstream. On the upstream side, IUU fishing decreases the local demand for fishing gear, boats, and another equipment. On the downstream side, the losses come from the fish processing, packaging, marketing, and transportation industry. Besides, the impact also comes from the decline of fisheries income its self.

Environmental sectors are the front gate which get direct losses from IUU fishing. It contributes directly to overexploitation of fish stocks. When the fish

⁷ MRAG, 'Illegal, Unreported, and Unregulated Fishing', in *ISSUELAB's website*, <<http://www.issuelab.org/resources/17797/17797.pdf>>, [accessed on 15 March 2017].

⁸ MRAG, *Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries*, London: DFID, 2005.

stocks in the ocean are imbalance, then it will need a long time to recover the populations and the ecosystem surrounds it. Besides, IUU fishing can destroy the marine environment, distorts competition, and cheat the fisheries who operate legally.⁹

IUU fishing also creates negative social impact, particularly for the developing countries. The social impacts can endanger food security and it can trigger conflict with local artisanal fleets. Moreover, the practice of IUU fishing is correlating with the human rights violation related to the slavery. Usually the actors of IUU fishing hired people with inappropriate working contract. The unjust manners usually refer to the use of bonded labor, poor nourishment, widespread injuries and unhygienic condition leading to many cases to illness. Furthermore, the violation of labor also occurred in the vessels including restraining crew with chains or shackles.¹⁰ In addition, to anticipate the risk of vessel forfeiture, the actors of IUU fishing are often used an old and decrepit vessels. This kind of boat is far from the safety standard and can threaten the risk of injury and death for the crew members. They insist to do this to avoid inspection that will increase the costs.¹¹

⁹ SEAFISH, 'The Seafish Guide to Illegal, Unreported, and Unregulated Fishing (IUU)', in *Seafish's website*, <http://www.seafish.org/media/742176/seafishguidetoiuu_201211pdf>, [accessed on 17 March 2017].

¹⁰ Mcdowell, R., Mason, M., & Mendoza M., 'AP Investigation: Are slaves catching the fish you buy?', in *The Big Story's website*, on 25 March 2015, <<http://bigstory.ap.org/article/b9e0fc7155014ba78e07f1a022d90389/ap-investigation-are-slaves-catching-fish-you-buy>>, [accessed on 10 March 2017].

¹¹ WWF, *An Analysis of the Impact of IUU Imports on U.S. Fishermen*. Washington DC: World Wild Life, 2016.

B. Dynamic of IUU Fishing in Indonesia

1. Illegal, Unreported, and Unregulated (IUU) Fishing in Indonesia

Indonesia is an archipelago country of which the two third of territory is marine water. As a marine county, Indonesia has a huge potential on its marine resources for instance fishery sectors, marine industry, property and services providers of transportation, and the tourism. By its wealthiest marine sectors, many foreign vessels come to Indonesian waters for gaining advantages illegally. From this activity, one of the major losses comes from fishery sectors. It is because there are many foreign fishing vessels which try to catch fishes in Indonesian waters through illegal, unreported, and unregulated method.

The variety of marine resources from Indonesian waters attracts foreign fishing vessels to gain benefit illegally. As stated in the previous sub chapter, illegal, unreported, and unregulated have each definition and meaning. The third term is used by foreign fishing vessels to catch fishes in Indonesian water. First, the illegal fishing is conducted by foreign fishing vessels through several ways such like: a) fishing without legal license; b) fishing by spurious fishing license; c) fishing by using the prohibit fishing gears; and d) fishing the prohibit species or not accordance with the law. Second, the unreported fishing is conducted by foreign fishing vessels through: a) falsification of fish catching data; b) delivering the fish catching directly to another country or doing transshipment within the ocean. The third, unregulated fishing in Indonesia usually happens because uncertainty of the regulation about the recapitulation fish catching mechanism and the arrangement of the fishing location that have not been settled yet.

The practice of IUU fishing spread over the Indonesian waters since 2005 and reached its peaks on 2010. In each year, approximately a thousand fishing vessels are expected dealing with illegal, unreported and unregulated (IUU) fishing. But unfortunately only a few vessels that can be seized. Foreign fishing vessels seized by the Indonesia's water Police usually come from Thailand, Myanmar, China, Cambodia, Vietnam, and Malaysia.¹² The figure below will show you the vessels seized by the government from 2005 up to 2010.

Table 3.1 The Fishing Vessels that has been Seized from 2005-2010

YEAR	SEIZED VESSELS		
	KII Indonesia Fishing Vessels	KIA Foreign Fishing Vessels	TOTAL
2005	91	24	115
2006	83	49	132
2007	95	88	183
2008	119	124	243
2009	78	125	203
2010	24	159	183
TOTAL	490	569	1059

Source: *Kapal Pelaku IUU Fishing yang Ditangkap 2005-2010*. In S. V. Muhamad, *Illegal Fishing di Perairan Indonesia: Permasalahan dan Upaya Penanganannya secara Bilateral di Kawasan* (p. 69). Jakarta: P3DI Setjen DPR.

Indonesian government seemed less concerned about this matter that was shown on how the responsible board saved the vulnerable waters. According to Indonesian Ministry of Fisheries and Marine Affairs, from 2005 until 2010 the operation to watch Indonesian waters only depended on the 24 unit of surveillance

¹² Dam, S., 'Masalah Illegal Fishing', *Masalah Perbatasan Wilayah Laut Indonesia Di Laut Arafura dan Laut Timur*, ed. by J. Sitohang, Jakarta: LIPI Press, 2009, pp. 5-6.

vessels which operated for about 100-180 days per year.¹³ Incapability of the government to secure Indonesia waters territory occurred because the number of waters police is not compatible compared with the Indonesian marine area.

The delinquency on fisheries sectors in Indonesia usually takes place in the region contained with potential fisheries resources. This location is mostly located in the vulnerable area that less secure. In the Eastern of Indonesian waters, IUU fishing usually takes place in: a) Papua Water; b) Maluku Sea, Halmahera Sea; c) Tual Water; d) Sulawesi Sea; e) Pacific Ocean; f) Indonesia-Australia Water; and g) East Borneo Water. In the western of Indonesia, IUU fishing occurs in: a) Northern part of Borneo, in South China Sea; b) Aceh Water; c) Malaka Strait; d) North Sumatera (Pandan Water, Sibolaga Bay); e) Karimata Strait; f) Natuna Sea; and g) Gosong Niger Island Water.¹⁴

2. The Causative Factor of Illegal, Unreported, and Unregulated (IUU) Fishing in Indonesia

Illegal, unreported, and unregulated fishing happened in Indonesia because Indonesian marine owned a lot of potential resources which are economically valuable. It happened not only because of the wealth on marine sectors, but also the chance to enter Indonesia territory. According to Kasijan Romimohtarto¹⁵, there are

¹³ Muhamad, S. V., 'Illegal Fishing di Perairan Indonesia: Permasalahan dan Upaya Penanganannya Secara Bilateral di Kawasan', in *Journal DPR RI*, on 16 March 2016, <<https://jurnal.dpr.go.id/index.php/politica/article/view/305/240>>, [accessed on 11 March 2017].

¹⁴ Kusuma, I., 'Forum General Discussion', in *Journal DPR RI*, on 16 March 2016, <<https://jurnal.dpr.go.id/index.php/politica/article/view/305/240>>, [accessed on 11 March 2017].

¹⁵ Romimohtarto, K., 'Pengelolaan Pemanfaatan Kekayaan Hayati dan Nabati di Perairan Indonesia', in *Seminar Hukum Nasional Vol. 5*, ed. by R. Dahuri, Jakarta: BPHN, 1991, p. 433.

four triggering factors that attract foreign fishing vessels to do IUU fishing in Indonesia:

a. The Rising of Global Fish Consumption

Consuming fish is scientifically proven to be able fulfilling the needs of protein in human body. Fish contains good protein for instance Omega 3, 6, and 9 which are useful for the development of brain. Thus, the awareness about this topic came when the society started to realize the importance of healthy life style. Therefore, the demand from the costumer on fish stocks is really high in the world wide, including in Indonesia. Within five years, the national fish consumption surged more than 1.2 million tons in line with the growth of Indonesian.

The need of fish stocks in national and global level is not equal with the availability of global fish stocks. According to FAO, the need of fish stocks for fulfilling the demand of global society reaches for about 50 million tons. Meanwhile, the availability of fisheries resources only 9-10 million tons per year. Therefore, the possibilities of crisis on fish stocks are right in front of eyes. Thus, Indonesia should prepare the concrete steps to deal with it. Retracing that Indonesia is the fishing grounds for fish stocks, it is really susceptible for other countries to do illegal fishing in Indonesia territory.

b. The Dwindling of Fish Stocks in other Countries

The dwindling of fish stocks in other countries happened because of the used of high-tech fishing vessels. The advancement of technology created new technologies in all sectors, including fisheries sectors. In the last decade, the

developed countries already used the high technology of fishing vessels. It was a helpful method for fisheries to catch fish in a large scale within the short time.

Generally that is the efficient innovation for fisheries sectors, but actually by doing that the world's fish stock is running out. When the fish stocks of a country are over exploitation, then the home country of high-tech fishing vessels will do the expansion toward other regions that still have enough fish. This condition is triggering the activity of illegal, unreported, and unregulated fishing within a country as well as Indonesia.

The process high-tech fishing vessels created the imbalance condition of fish stocks because the catching and the growing fish were not balance. According to FAO, for about 52 percent of world's fish stocks is full exploited. It means 52 percent of world's fish stock is sealed of exploitation. If this still happens, then the global society will lose their fisheries sectors in 2050.

c. Weak Supervision of the Officers in Indonesia Waters

Weak supervision of the Indonesian officers in Indonesia waters territory is one of the factors of IUU fishing in Indonesia. Actually, Indonesia has already established several laws which talk about illegal fishing and how to deal with the suspects. However, the law cannot be enforced as long as the officers are not serious enough to handle the case.

d. Weak Law Enforcement in Indonesia

The intensity of foreign fishing vessels which enter Indonesia territory is showing how weak the law enforcement in Indonesia. The foreign vessels can easily enter the territory without any legal inspection from the navy seals or water police.

It is an ironic, since two third of Indonesia territory is water territory and the concern to save its territory is less than it should be. Thus, it is no wonder that Indonesia territory is very vulnerable area from foreign vessels.

Moreover, the weakness from the law enforcement is also shown in the practice of the law itself. Actually, according to the Law No. 31 of 2014, Article 85 and Article 101, it is stated that the suspect of IUU fishing is sentenced to be imprisoned for five years. In reality, the practice is far from the written regulation. There were a lot of cases dealing with IUU fishing, but only some of them were addressed to the court. This happened in 2007 when there were 103 cases about illegal fishing. Then, ironically only 77 cases were delivered to the court. Through that process, it gave bad impression for the Officers in Indonesia.

3. The Impact of Illegal, Unreported, and Unregulated (IUU) Fishing in Indonesia

Cross border crime always makes detriment in all sectors, from the national level, society, and the environmental scope. In this context, Illegal, Unreported, and Unregulated (IUU) fishing is included as cross border crimes and creates a huge disadvantages for Indonesia in all scales.¹⁶ The explanation below will examine the impact of illegal, unreported, and unregulated (IUU) fishing for Indonesia.

Firstly, the practice of IUU fishing will destroy the preservation of fish in Indonesian waters. It is very possible since there are many foreign fishing vessels that use illegal method to gain profit. Besides, misreported, report toward the

¹⁶ Damanik, R., *Menjala Ikan Terakhir (Sebuah Fakta Krisis di Laut Indonesia)*, Jakarta: WALHI, 2008.

quality of fish which is in below standards or underreported, and unregulated fishing will give crucial impact for the preservation of fish in Indonesia. The inaccuracy of fish stocks in Indonesia will be difficult to control and threaten the preservation of fish stock in national and global level.¹⁷

Secondly, national income of Indonesia will be aggrieved as the result of IUU fishing in Indonesia. It is suitable with the statement from Sri Mulyani, the chief of Ministry of Finance. She argued that in 2016 the financial loss from the fisheries sectors, especially through IUU fishing, was about US\$ 20 billion. Besides, the ineffective strategy for fisheries management and the practice of illegal fishing have caused a loss for about US\$ 75 up to US\$ 125 billion of global revenue annually.¹⁸

Thirdly, the most visible impact is coming from the environmental sector. In practice, foreign fishing vessels that conduct IUU fishing usually use high-tech vessels or Fish Aggregation Devices (FAD). This type of vessels can destroy the ecosystem of marine through several ways such like the usage of fish bombs, cyanide, anesthesia, and trawl. These methods can destroy the habitat of various types of fish and reproduction of the ecosystem itself.¹⁹

The last impact is IUU fishing interferes the sovereignty of Indonesia. When we analyze, Illegal, Unreported, and Unregulated (IUU) fishing is a form of cross

¹⁷ Wardana, W. A., *Dampak Pencemaran Lingkungan*, Yogyakarta: Andi Offset, 1985.

¹⁸ Pasopati, G., 'Sri Mulyani: Illegal Fishing Rugikan Indonesia US\$ 20 Miliar', in *CNN Indonesia*, on 9 Junw 2015, <<http://www.cnnindonesia.com/ekonomi/20150609151219-92-58815/sri-mulyani-illegal-fishing-rugikan-indonesia-us--20-miliar/>>, [accessed on 14 March 2017].

¹⁹ KKP, 'Kerugian Negara Akibat Illegal Fishing, 101 Triliun Rupiah!', in *KKP News's website*, on 22 September 2015, <<http://news.kkp.go.id/index.php/kerugian-negara-akibat-illegal-fishing-101-triliun-rupiah/>>, [accessed on 14 March 2017].

border crimes. Thus, each actor of IUU fishing is entering Indonesia territory illegally without any legal license from the visiting countries. Besides, the actor of IUU fishing is dealing with exploitation of marine resources by stealing. These activities can be considered as an effort to violate Indonesia's sovereignty.²⁰

C. Indonesian Advantages over Ratifying FAO Port State Measures Agreement

The multitude practices of IUU fishing in Indonesia created the decline of Indonesia's national income from the fishery sectors. Based on the explanation above, Indonesia experienced the economic loss for about US\$ 3.11 million per year.²¹ This amount is not suitable with the huge potential lied across Indonesian waters. Besides, Indonesia also experienced threat toward the sustainability of marine ecosystem because of the overfishing by foreign fishing vessels. Moreover, the impact of IUU fishing is getting worse because of weak law affirmation in Indonesia especially in dealing with this matter.

Realizing the incapability of Indonesia to solve this matter, Indonesia is looking for other alternatives by actively participating in world conferences related to this issue. One of the prominent conferences was FAO conference that discussed the method to optimize the use of port state to combat IUU fishing which was held in 2009. This agenda resulted a draft of agreement which aimed to be a binding agreement about IUU fishing in near future. Through participating in FAO Port

²⁰ Damanik, R., *loc. cit.*

²¹ Wardah, F., 'Konsumsi Ikan Global Meningkat, Penangkapan Ikan Ilegal Naik', in *VOA Indonesia's website*, on 24 March 2017, <<http://www.voaindonesia.com/a/konsumsi-ikan-global-meningkat-penangkapan-ikan-ilegal-naik/3780018.html>>, [accessed on 30 March 2017].

State Measures Agreement (PSMA), Indonesia is expected to be able to eliminate any form of IUU fishing which occurred in Indonesian waters. Therefore, in this sub chapter, the writer will try to examine the advantages that Indonesia can achieve by ratifying PSMA.

The first advantages is Indonesia can optimize the use of port within Indonesia jurisdiction. I believe that port is the important main gate to access a country from the waters jurisdiction. Therefore, it is very important to protect and secure each port in order to anticipate any form of illegal activities conducted by foreigners. Thus, by signing and ratifying PSMA, Indonesia can implement the role, responsibilities, and obligations toward each port in order to inspect each vessel that is willing to enter Indonesian jurisdiction.²²

The second advantages is Indonesia can actively participate in eliminating the practice of IUU fishing in a global level. It means that by joining this agreement, Indonesia can help other coastal states to combat IUU fishing in their countries by conducting information exchange. It is the method to block the flow of illegal vessels indicated in IUU fishing by spreading the vessels information toward the members of agreement so that vessels cannot enter any country jurisdiction.

The third advantages is improving the national income and preserving the sustainability of fishery management. Indonesia is expected to get better

²² FAO, 'The Benefits of Ratifying and Implementing the 2009 FAO Port State Measures Agreement', in *FAO's website*, on 11 January 2017, <<http://www.fao.org/fishery/psm/agreement/en>>, [accessed on 30 March 2017].

improvement in its economic by implementing this agreement.²³ The implementation of this agreement is influenced the behavior of states to stop purchased fishes from the IUU fishing. Thus, they will start to fulfill their needs of fishes by buying form the legal market so that the income from the fishery sectors increases. Besides, the implementation of PSMA also promotes the method to catch fish in legal ways. Therefore, through the promotion on the practice of legal fishing, it is expected to help the improvement of marine ecosystem that has been destructed by overfishing.

²³ Long, T., 'Benefits of Becoming a Party to the Port State Measures Agreement', in *Pewtrusts's website*, on 24 June 2016, <<http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/06/benefits-of-becoming-a-party-to-the-port-state-measures-agreement>, [accessed on 30 March 2017].