

CHAPTER IV

REASONS BEHIND THE RATIFICATION OF 2009 FAO PORT STATE MEASURES AGREEMENT IN 2016 BY INDONESIA

The number of Illegal, Unreported, and Unregulated (IUU) fishing practices which occurred in Indonesia waters was encouraging Indonesia to overcome this issue. Actually, Indonesia already has several laws for banding the practice of IUU fishing, but it is not firm enough and cannot give deterrent effects for the suspects. Besides, nowadays IUU fishing becomes a new phenomena of cross border crimes that has been involves many countries and causes damage for many sectors. Therefore, Indonesia always tries to bring this case as an important issue to be highlighted in the regional and global forum. Furthermore, as well as other maritime countries, Indonesia is expected to have a single regulation concerned on the IUU fishing which can be applied in all countries, so that the practice of IUU fishing can be eliminated globally.

The establishment of FAO Port State Measures Agreement (PSMA) in 2009 has been creating the optimism for all coastal states about the new settlement to overcome IUU fishing matters. Realizing the importance of this agreement, FAO decided to upgrade this agreement as a binding agreement. Thus, in order to make it binding, FAO needed to get the ratification from the member states. In line with the purpose of PSMA, Indonesia also gave response by signing this agreement on

November 22, 2009¹. Later on in June 23, 2016 Indonesia finally ratified the agreement. Indonesia seemed to have a tough process to recognize the importance of this agreement to help them securing the marine resources of Indonesia.

It is an interesting process, that to ratify the important agreement such like PSMA needs a long waited, even though the disadvantages which occur from IUU fishing is happening now on. Therefore, in this chapter, the writer will examine the reasons behind the ratification of PSMA by Indonesia. The writer will explain three main reasons why Indonesia did finally ratify Port State Measures Agreement (PSMA).

A. The increasing numbers of IUU fishing in Indonesia

In 2006, a writer named Worm released controversial statement that this world will grapple the destruction of the global fisheries in 2048². He argued that this might happen as the response of the fisheries sectors that have been experienced overfishing. His argument was supported with the data from FAO that the global catch in 2011 only reached 78.9 million tons, lower than global catch in 2007 for about 80.4 million tons.³

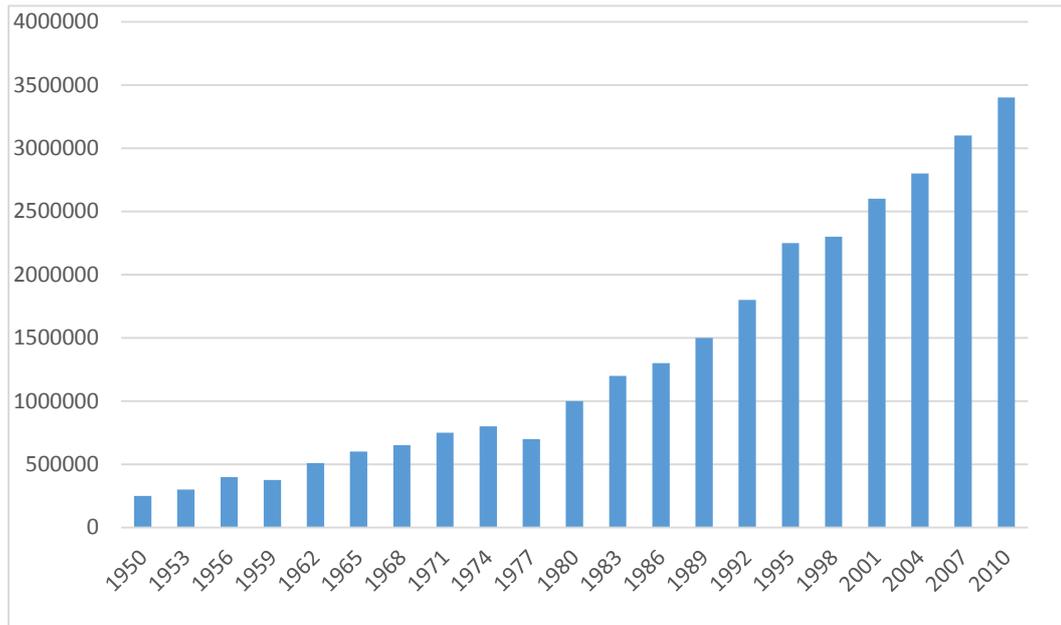
¹ FAO, 'Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing', in *FAO's website*, on 17 February 2017, <http://www.fao.org/fileadmin/user_upload/legal/docs/037s-e.pdf>, [accessed on 13 March 2017].

² Worm, B., Edward, B., & Nicola, B., 'Impact of Biodiversity Loss on Ocean Ecosystem Services', in *Journal of Science Vol 314*, 2006, pp. 787-790.

³ FAO, *The State of World Fisheries and Aquaculture*, Roma: FAO, 2012.

Even though the global fisheries catch level decreased, but it did not give much impact for Indonesia. Since 1950 until 2010, the catch fish level remained stable as illustrated in the Figure 4.1 below.

Figure 4.1 Indonesian Fisheries Catch Level

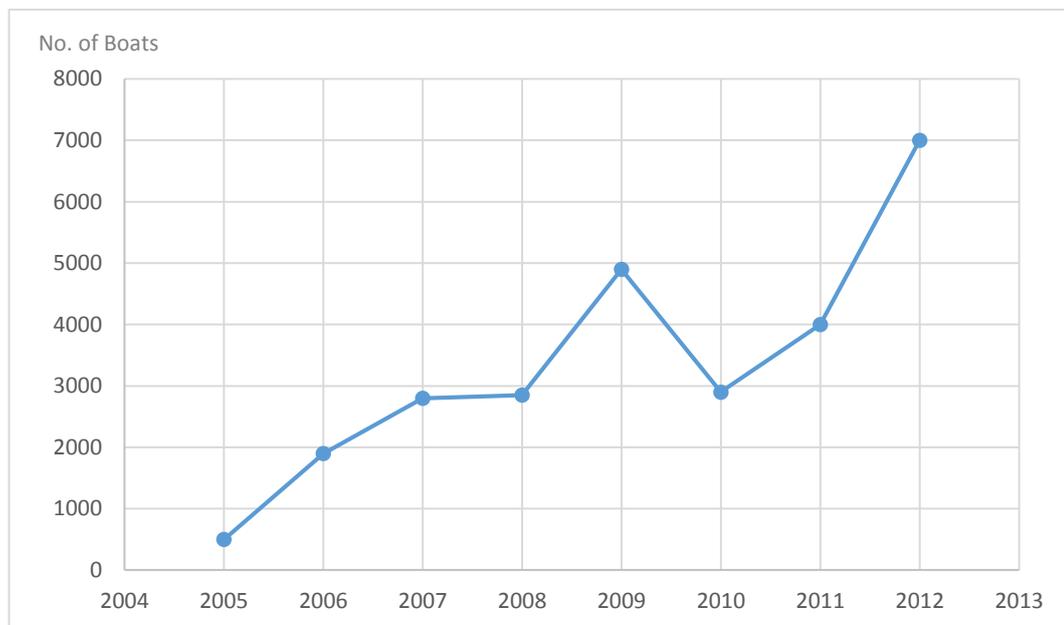


Source: FAO (2015). *Krisis Perikanan*. In *Laut Indonesia dalam Krisis* by Greenpeace. p. 3. Retrieved from <http://www.greenpeace.org/seasia/id/PageFiles/533771/Laut%20Indonesia%20dalam%20Krisis.pdf> on March, 21 2017.

Although the production from the fishery sectors remained stable, but Indonesia was also under threat of declining fishery production due to ecosystem degradation and overfishing. Several regions of fishing ground in Indonesia already experienced the indication of overfishing, especially for the several important commodities. Besides, the threat also came from the practice of illegal, unreported, and unregulated (IUU) fishing by using high-tech fishing vessels. Approximately 4326 vessels have committed to the practice of IUU which stole Indonesia's fish

stock for about 25%.⁴ The detail of the increasing numbers of IUU fishing in Indonesia can be seen in the Figure 4.2 below.

Figure 4.2 IUU Fishing in Indonesia from 2005-2012



Source: FAO (2015). *Krisis Perikanan*. In *Laut Indonesia dalam Krisis* by Greenpeace. Retrieved from <http://www.greenpeace.org/seasia/id/PageFiles/533771/Laut%20Indonesia%20dalam%20Krisis.pdf> on March, 21 2017.

B. Lack of law enforcement about IUU fishing in Indonesia

Indonesia is known as one of the coastal states that owns a lots of marine treasures lied along its territory. The optimization from the marine treasures is noted as one of the cantilevers of Gross National Product (GNP) which was derived for about twenty six and half percent in 2002.⁵ Furthermore, the marine sectors are

⁴ PSDKP-KKP, *Refleksi 2007 dan Outlook 2008: Pengawasan dan Pengendalian Sumberdaya Kelautan dan Perikanan*, Jakarta: KKP, 2008.

⁵ Dirhamsyah, D., *Maritime Law Enforcement and Compliance in Indonesia: Problems and Recommendations*. Australian Association for Maritime Affairs, 2005, p. 7, <<http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1260&context=lawpapers>>, [accessed on 15 March 2017].

beneficial for the supply of food, employment, and market ground. Therefore, Indonesia faces challenges to protect, manage, and conserve its marine territory from any kinds of threat.

In dealing with the practice of illegal, unreported, and unregulated (IUU) fishing, Indonesia already has several laws to overcome this problem. In term of fisheries and marine resource management, Indonesia has already arranged the regulation on Act No. 9/1985 concerning Fisheries and Act No. 16/1992 concerning Quarantine of Agriculture, Cattle, and Fish.⁶ Unfortunately, the regulation that has been arranged cannot eliminate the practice of IUU fishing from Indonesian waters. This is regarding to the limited surveillance system and devices and principle problems related to the responsible officers.

Limited surveillance system and devices in order to support the law enforcement of IUU fishing in Indonesia occurred as the result of lack of funds and equipment. In order to monitor and secure Indonesia's waters territory, it needs many efforts in term of the officers and the equipment itself. However, in fact Indonesia only has two responsible boards to secure Indonesia water for instance sea patrols and aerial surveillance, but in practice, Indonesia relied more on the sea patrols as the surveillance board.⁷ If we compared to the range of waters territory and the amount of responsible board, it seemed like effortless and impossible to secure the Indonesia's territory from IUU fishing. Then, this is worsened by the

⁶ Dirhamsyah, D., *loc. cit.*

⁷ Dirhamsyah, D., *op. cit. pp. 9-11.*

minim budget for sea management operational which directly affected the procurement of facilities and equipment, maintenance and personnel costs of enforcement agencies.⁸

The limited equipment to secure Indonesia waters territory also became the highlight for the enforcement agencies. Throughout 2015, Indonesia only had eighty four devices of sea patrol and aerial surveillance.⁹ The number of the equipment owned by Indonesia is not relevant compared to how big the territory is. According to traditional military-equipment needs assessment, Indonesia requires at least 300 vessels in large and small size, to conduct effective sea patrols within Indonesian jurisdiction.¹⁰ This is far from the amount of the equipment that Indonesia use these days.

The other factor that compounds the law enforcement about IUU fishing in Indonesia is principle problems from the officers. The first problem emerged from the limited well trained personnel. The lack of trained personnel was a consequence of limited budget from the government for basic training. It was very critical problem since the most basic thing about the sea patrols was the officers itself.

The second problem came up from the lack of integrated laws and regulations. Indonesia is a typical country which has good law enforcement but it

⁸ Bank, T. W., 'Navigating the Institutional Landscape: Introduction and Overview', in *Institutional Issues and Perspectives in the Management of Fisheries and Coastal Resources in South East Asia*, ed. by M. T. Salamanca, Swedish: SIDA & ICLARM, 2001, p. 8

⁹ Jagratara, 'Polisi Air dan Udara Menuju Era Poros Maritim', in *Jagratara Majalah Kepolisian's website*, on 18 February 2016, <<http://jagratara.co/polisi-air-dan-udara-menuju-era-poros-maritim/>>, [17 March 2017].

¹⁰ Djalal, H., 'Piracy in South East Asia: Indonesia and Regional Responses', in *Pacific Sealanes Security Institute Conference on Maritime Security in Asia*, Honolulu, 2004, pp. 2-3.

is ineffectively implemented. This also happened on the law enforcement regarding the IUU fishing. Even though the laws and regulations were quite firm, but in practice there were still many loopholes that could be violated by the fisherman. According to the law, illegal fishing must be caught in the act to be guilty of an offence. However, when the fishermen used poison such like cyanide or dynamite to catch fish, then it might get difficult for the officers to catch the fishermen on board directly. It needed the formal statement from the crime laboratory to ensure that the fisherman committed to the IUU fishing.¹¹

The third was inappropriate judicial system about the suspect fishermen who conduct IUU fishing. In Indonesia, the problems related to the exploitation of environmental and marine ecosystem could not be addressed properly within the existing courts. Indonesia only has four types of courts: general courts, religious courts, military courts, and state administration courts.¹² All environmental cases are handled by the general courts which result in inappropriate result or penalty. This occurred because the general courts only examined the crimes only based on the case itself without considering the further effect from the destruction of the environment. In consequences, the courts only give minimal and little deterrence for the suspect of any environmental crimes. Thus, since the sentence was lighter than the profit from the IUU fishing, the fishermen who committed to IUU fishing tended to reiterate to do IUU fishing again within Indonesia territory.

¹¹ Dirhamsyah, D., *op. cit. pp. 10-13.*

¹² *Ibid.*,

The inappropriate judicial system can be seen in the case of illegal fishing which took place in Ambon, Maluku in 2015. A foreign fishing vessel from Tiongkok namely MV Haiva was found out as the suspected of IUU fishing in Ambon and the court did not give relevant penalty. There was no single crew who received punishment and the court only gave penalty for about 200 million rupiah.¹³ Through the example above, it was believed that the court was not serious enough to handle the issue of illegal, unreported, and unregulated fishing in Indonesia.

C. The need to overcome IUU fishing by cooperation in global level

The practice of IUU fishing happens in almost all maritime countries so that, it makes sense if IUU fishing is known as a global threat for all countries. The damage of IUU fishing not only harms the national income and sovereignty of visited countries, but also interferes another country by undermining the food and economic security of a country.¹⁴ In the last decade, several coastal states started to realize the need to look for a new settlement which could control the fisheries sector, especially on illegal, unreported, and unregulated fishing in a global level. Therefore, a lot of coastal and non-coastal states which are concerned on the ecosystem sustainability are gathered in order to cooperate to overcome this problems.

¹³ Khairunnisa, A., 'Menteri Susi: Hukuman bagi Illegal Fishing, Kita Kalah dari Negara Kecil di Afrika', in *KBR's website*, on 15 October 2015, <http://kbr.id/10-2015/menteri_susi_hukuman_bagi_illegal_fishing_kita_kalah_dari_negara_kecil_di_afrika/76704.html>, [accessed on 18 March 2017].

¹⁴ Mundy, V., 'Closing the net: The EU must step up enforcement of seafood import controls', in *Euractiv's website*, <<http://www.euractiv.com/section/global-europe/opinion/closing-the-net-the-eu-must-step-up-enforcement-of-seafood-import-controls/>>, [accessed on 16 March 2017].

The increasing cases of IUU fishing and ineffectiveness of the law enforcement encouraged Indonesia to look for another alternative to overcome this matter. Indonesia began to concern on the fisheries and marine sectors when there were many cases of illegal fishing by foreign fishing vessels in Indonesian waters in 2005. These cases affected the national non-tax revenues which obtained only 150 million rupiah.¹⁵ Besides, the practice of illegal fishing are also effected the sustainability of the waters ecosystem, the welfare of small boats fisheries, the national income, and the Indonesian sovereignty. Therefore, with the huge impact derived from illegal, unreported, and unregulated fishing, then it is not surprising to call it as the national disaster for Indonesia.

In order to reduce the amount of illegal, unreported, and unregulated fishing cases in Indonesia, the Ministry of Marines and Fisheries started to conduct fishery sustainability through good quality control and traceability. Indonesia believes that the case of IUU fishing cannot be solved easily by the country itself, it needs the commitment and cooperation among coastal and non-coastal States to eliminate the practice of IUU fishing. Therefore, Indonesia always tries every possibility to solve this matter through bilateral agreement with the coastal states and active participation in the international conference related to the fisheries sustainability conferences conducted by FAO.

¹⁵ Sutardi, D., 'Tidak Ada Tempat bagi Perampok Ikan', in *Illegal Fishing No More: Komitmen Serius Pemerintah Perangi Illegal Fishing*, ed. by L.A. Pregiwati, p. 11, Jakarta: Pusdatim KKP, 2015.

The highlight of the strategy of Indonesia in combating IUU fishing was through its participation on FAO Port State Measures Agreement (PSMA) in 2009. The aim of this agreement was creating the regulation in the entry port of every coastal state for foreign fishing vessels. The visiting foreign fishing vessels must comply with the regulation by showing the legal document of the vessels and purposes on the use of port. Besides, this cooperation was strengthened by the communication among its members when there was a visiting from foreign fishing vessels indicating IUU. So, the suspected vessels cannot enter in any countries. Through this method, foreign fishing vessels that indicate to do IUU fishing can be detected and proceeded earlier. Indeed, this regulation will be permanently applied in all coastal states.

Considering the benefits which can be granted from this agreement, in 2009 Indonesia signed this agreement as well as other countries. However, signing the agreement was not enough to make it a binding agreement. The member states of this agreement should ratify the agreement in order to establish a new firm action to tackle IUU fishing. Therefore, FAO reinvented its members to analyze this agreement in which they can ratify this agreement later on. Thereupon, to show the commitment for eliminating the practice of IUU fishing, Indonesia finally ratified this agreement on June 23, 2016 along with other thirty six counties.¹⁶

¹⁶ Indriastuti, D., 'Perikanan: Kerja Sama Global Semakin Kuat', in *Supply Chain Indonesia's website*, on 23 July 2016, <<http://supplychainindonesia.com/new/perikanan-kerja-sama-global-semakin-kuat/>>, [accessed on 20 March 2017].

Indonesia strongly supported this agreement because they believed that a port was the main entry gate for each foreign vessel that wanted to enter the territorial waters of Indonesia. Besides, by maximizing the use of ports, the responsible board such like sea police can monitor the vessel traffic and identify the purpose of visiting vessels, so when they find out the vessels that indicate IUU fishing, it can be processed right away. Furthermore, Indonesia can use the information exchanged with other port states to obtain and exchange information about the suspected vessels so that they will be blocked from poachers' access to the international market

Even though Indonesia took such a long time to realize the importance of the agreement, but it did not turn down its commitment in eliminating the practice of IUU fishing in Indonesian waters. Through the ratification that has been done, the government is expecting a great result from the implementation of this agreement in Indonesia. The PSMA greatly supports the members by giving access to international cooperation, such as information exchange, training for inspectors, capacity building, technical assistance, and funding for activities related to PSMA.

In the other hand, Port State Measures Agreement is expected to be the standard of the supervision within the port in all over places in Indonesia. Right after the Indonesia ratified the agreement up to today, there have been five ports which already used PSMA standard for instance Samudera Bungus in West Sumatra, Nizam Zachman in Jakarta, Samudera Bitung in North Sulawesi,

Nusantara Ambon in Maluku, and Nusantara Pelabuhanratu in West Java.¹⁷

Furthermore, in order to gain the benefits from the PSMA, now Indonesia should create a firm ministerial regulation, facilities, and sufficient human resource to comply with PSMA requirements.

¹⁷ Pandaya, 'Finally, a game changer against illegal fishing', in *The Jakarta Post's website*, on 11 August 2016, <<http://www.thejakartapost.com/academia/2016/08/11/finally-a-game-changer-against-illegal-fishing.html>>, [accessed on 20 March 2017]