

CHAPTER ONE

INTRODUCTION

A. Background

One of the main problems of maritime security for many countries around the world including Indonesia is Illegal, Unreported and Unregulated Fishing (IUU Fishing) at sea. IUU fishing is illegal fishing practices (such as illegal fishing, and other unlawful activities), unreported (includes unreported, misreported, or under-reported), and unregulated (i.e., unregulated management).¹ It can cause harm to the society and the state, disrupt the security and stability in the sea, and may cause potential conflicts between Indonesia and other countries and threaten the country's sovereignty.

At this stage, the role of the law is needed to become a control media and prevention of acts that could disturb the stability of the management and conservation of fish resources and the environment. Sanctions by way of sinking is an attempt of the state to combat fishing activities that are carried out illegally and in addition to provide a deterrent effect and to improve the deterrence against violations which could harm the territory and threaten the country's sovereignty.²

¹ Arif Satria, 2009, *Ekologi Politik Nelayan*, Yogyakarta: LKIS Yogyakarta, p. 184.

² Data of National Fisheries Crime, 2016, "Penenggelaman Kapal dalam Undang-Undang Perikanan", taken from <http://data-tpnasional.kkp.go.id/read/penenggelaman-kapal-dalam-undang-undang-perikanan>, accessed on Tuesday, October 25th, 2016 at 9 pm.

Minister of Marine Affairs and Fisheries of Republic of Indonesia, Susi Pudjiastuti embodies these special measures by means of the sinking of the ship that is proven to conduct IUU Fishing. Based on data released by the Directorate General of Marine Resources and Fisheries of Ministry of Marine Affairs and Fisheries until the month of February 2016, 153 fishing boats that have been sunk, consisting of 20 Malaysian, 43 Philippines, 1 Chinese, 21 Thai, 50 Vietnamese, 2 Papua New Guinea, 1 Belize, 1 Nigerian and 14 Indonesian fishing boats.³

The important thing related to the sinking of foreign ships is that it should not be done arbitrarily and must be based on sufficient preliminary evidence. Sinking action is governed by the provisions of Article 69 paragraph (1) and paragraph (4) of Law Number 45 Year 2009 regarding Amendment to Law Number 31 Year 2004 on Fisheries.

Indonesia through the Law No. 17 Year 1985 has ratified UNCLOS (United Nations Convention on the Law of the Sea) concerning International Law of the Sea. It is made in Article 102 of the Law on Fisheries following the rules specified in UNCLOS Article 73 (3) which provides that the punishment given to fishery criminal act that occur in the Exclusive Economic Zone may not include imprisonment, unless there is an agreement between both countries.⁴

³ Directorate General of Marine Resources and Fisheries of Ministry of Marine Affairs and Fisheries, 2016, taken from <http://djpsdkp.kkp.go.id>, accessed on Tuesday, October 25th, 2016 at 9.34 pm.

⁴ Clay Vulcano Dharanindra, 2016, "Mempertanyakan Kebijakan Penenggelaman Kapal Asing", taken from <http://pssat.ugm.ac.id/2016/03/24/mempertanyakan-tindakan-penenggelaman-kapal-asing/>, accessed on Monday, November 7th, 2016 at 6.45 am.

The territory of fishery criminal act which is committed by foreign ship is in the territory of fisheries management Republic of Indonesia which includes Indonesia Exclusive Economic Zone.⁵ Meanwhile, based on UNCLOS in 1982, “imposition on the state law on the shore Exclusive Economic Zones cannot be fully implemented. The ships were arrested and their crews should be released immediately after giving a decent bail. Besides, the penalty imposed for violators of legislation in the Exclusive Economic Zone may not include reduction or corporal punishment”.⁶

If violations against coastal countries legislations occurred in the territorial sea or inland waters or archipelagic waters of a country, then in accordance with the sovereignty which is provided by Article 2 of UNCLOS 1982, coastal states can enact all the regulations of law even criminal law against the vessel, provided that the offense has had implications for coastal countries or disrupt the security of coastal states as defined in Article 27 (1) of UNCLOS 1982. But if the elements that are mentioned in Article 27 (1) of UNCLOS 1982 is not fulfilled, then the coastal countries can not apply its criminal jurisdiction against the vessel.⁷

Nevertheless, Indonesia as a party that sunk the ship is considered necessary to be responsible for hundreds of the sinking of the ships. There are many people who do not agree with the policy of the sinking of the foreign

⁵ Article 5 paragraph (1) on the Law No. 45 Year 2009 on the Amendment of Law No. 31 Year 2004 on Fisheries.

⁶ Article 73 on the United Nations Convention on the Law of the Sea 1982.

⁷ Usmawadi Amir, 2013, “Penegakan Hukum IUU Fishing menurut UNCLOS 1982 (Studi Kasus: Volga Case)”, *Jurnal Opinio Juris*, Vol. 12, Januari-April 2013, p. 74.

ship. They considered that the sinking of the foreign ships will cause harmful act. Indonesia's relationship with other countries have the potential to degenerate due to these problems. This is because the law in their countries is considered to protect the rights of its citizens.

A country can be held accountable for its actions against the law as a result of negligence. The background of the emergence of responsibility in international law is that there is no country in the world that can enjoy their rights without respecting the rights of other countries. Every act or omission of the right of other countries, causing the country is obliged to correct the violation of such rights.⁸

B. Research Question

How is the responsibility of Indonesia on the sinking of foreign ship against illegal fishing in Indonesia?

C. Research Objective

1. To analyze the issue of the sinking of foreign ship against illegal fishing in Indonesia. It learns about how the responsibility of Indonesia is on the sinking of foreign ship.
2. To understand or to conduct a library research on the state responsibility and get the perspective in the scope of international law.

⁸ Jelly Leviza, 2014, "Pengertian Tanggung Jawab Negara", taken from <http://repository.usu.ac.id/bitstream/123456789/41201/3/Chapter%20II.pdf>, accessed on Tuesday, November 8th, 2016 at 8.16 am.

D. Research Benefit

1. Theoretical Advantages

This research would give better understanding on how the international law regulates the state responsibility on the sinking of foreign ship against illegal fishing.

2. Practical Advantages

This research would give benefit to know the responsibility of Indonesia on the sinking of foreign ship against illegal fishing.