

CHAPTER FOUR

FINDING AND ANALYSIS

A. The Description of Law Enforcement on Illegal Fishing in Indonesian Sea under Indonesian Law and International Law

The chapter of this research will be divided into two. Firstly the author will be explain about law enforcement on illegal fishing under International law and then continue to discuss the concern on the law enforcement on illegal fishing under Indonesian law.

1. The Law Enforcement on Illegal Fishing in Indonesia under International Law

a. Background of International Law

International law reflects the establishment and subsequent modification of a world system founded almost exclusively on the notion that independent sovereign states are the only relevant actors in the international system.¹ International law is usually defined as the legal rules, norms, and customs governing the relationship of

¹ Encyclopaedia Britannica, “Historical Development”, taken from <https://www.britannica.com/topic/international-law/Historical-development>, accessed on Wednesday, March 1st, 2017 at 1.pm.

autonomous states and associations of states. States are the subjects of international law.²

International law can be defined as the whole law that mostly consists of principles and rules of conduct that must be adhered by countries in cross-border relations. Even in certain cases, international law also applies to individuals in relation to states.

The primary source of law in International law is the treaties and conventions that contain the legal rules that regulate the subject matter of the treaty or convention in question.³ Treaties are the most important sources of international law and also serve as the origins of International Government Organization (IGO), which in turn are important sources of law. Customary practices that have evolved over time often become codified in law, and general legal principles that are common to a significant number of states can become part of the corpus of international law. Finally, law arises from the community of international legal scholars.⁴

² Anonymous, “Background and Context in International Law”, available on <http://lawexplores.com/background-and-context-in-international-law/>, accessed on Thursday, March 2nd, 2017 at 8.am.

³ *Ibid.*

⁴ Eric Brahm, 2003, “International Law”, taken from www.beyondintractability.org, accessed on Thursday, March 2nd, 2017 at 8:10am.

Basically the role of international law is more focused on ways to solve problems that occur in the international scope. International relations held between countries are not always well established. In fact, it often causes disputes or problems. Disputes can start from a variety of sources, namely border issues, natural resources, environmental damage, trafficking, etc.

b. History of the International Law of the Sea 1982

The description of the history of international law of the sea should begin with a discussion of the various functions of the sea for mankind. In history, the sea has been proven to have various functions, among others: 1) food sources for humans; 2) cross-trade routes; 3) a means of conquest; 4) a place of combat; 5) place to have fun; 6) separator and unifying the nation.⁵

The functions mentioned above, the sea can be utilized by humans as a natural resource that can be used as a source of livelihood, shipping lanes, defenses and security interests and for other purposes. It has been felt by humankind and has given impetus to the acquisition and utilization of the sea by each country based on legal conception.

⁵ Dikdik Mohammad Sodik, 2014, *Hukum Laut Internasional dan Pengaturannya di Indonesia*, Revised Edition, Bandung, PT Refika Aditama, p. 1.

The United Nations Convention on the Law of the Sea (UNCLOS) establishes a comprehensive legal framework to regulate all ocean space, its uses and resources. It contains, among other things, provisions relating to the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone (EEZ) and the high seas. It also provides for the protection and preservation of the marine environment, for marine scientific research and for the development and transfer of marine technology.⁶

The convention introduced a number of provisions. The most significant issues discussed in the convention are boundary setting, navigation, island status and transit regime, exclusive economic zones (EEZs), continental shelf jurisdictions, exploitation regimes, marine environmental protection, scientific research, and dispute resolution

The presence of the conception of international law of the sea cannot be separated from the history of the growth of international law of the sea that recognizes the struggle between two conceptions, namely:

a) *Res Communis*, states that the sea belongs to the people of the world, and therefore cannot be taken or owned by each country;

⁶ Treaties Office, 2009, available on <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?redirect=true&treatyId=511>, accessed on Friday, August 11th, 2017 at 7:30pm.

b) *Res Nullius*, states that the sea has no possession, and the arena can be taken and owned by each country.⁷

The development of both doctrines begins with a long history of marine control by Roman Empire. Legal thinking of the Romans of the sea is based on the doctrine *res communis omnium* (the common right of all mankind), which looked at the use of the sea free or open to everyone. On the other hand, in exercising its power at sea, many signs indicate that in view of the Romans the sea could be possessed based on the conception of *res nullius*. According to the conception of *res nullius*, the sea can be possessed if those who desire to possess it can master by occupying it.⁸

c. The Law Enforcement on Illegal Fishing based on UNCLOS 1982

United Nations Convention on the Law of the Sea (UNCLOS) is an international agreement resulting from the third UNCLOS (UNCLOS III) which runs from 1973 to 1982. This convention defines the state's rights and responsibilities in the use of oceans in the world

⁷ *Ibid.*

⁸ *Ibid.*

and establishes guidelines for the business, environment, and management of marine natural resources.⁹

UNCLOS 1982 broadly distinguishes marine territories into two categories in which state may enforce its laws against IUU Fishing, namely, sovereignty over territorial sea and jurisdiction over the territorial sea of a state. The sovereignty over the territorial sea of a coastal state is inland waters, while the jurisdiction and sovereign right over the territorial sea of a coastal state are Exclusive Economic Zone (EEZ) and Continental Shelf.¹⁰

UNCLOS 1982 does not regulate the IUU Fishing. The discourse on illegal fishing emerged in the framework of IUU Fishing Practices at the CCAMLR forum (Commission for Conservation of Atlantic Marine Living Resources) on 27 October - 7 November 1997. IUU fishing can be categorized into three groups, namely:

1. Illegal fishing is an activity to catch a fish illegally in the Exclusive Economic Zone of a state, or do not have license from the state;

⁹ Yordan Gunawan and Muhammad Arizka Wahyu, 2015, Kebijakan Peneggelaman Kapal oleh Pemerintah Indonesia dalam Perspektif Hukum Laut Internasional, ISBN 978-602-72534-0-7, Yogyakarta, pp. 475-476.

¹⁰ Usmawadi Amir, 2013, "Penegakan Hukum IUU Fishing menurut UNCLOS 1982 (Studi Kasus: Volga Case)", Vol. 12, Januari-April 2013, *Jurnal Opinio Juris*, taken from <http://pustakahpi.kemlu.go.id/app/Penegakan%20Hukum%20IUU%20Fishing%20menurut%20UNCLOS%201982%20.pdf>, downloaded on Thursday, March 2nd, 2017 at 8:30am.

2. Unregulated fishing is an activity to catch a fish in the Exclusive Economic Zone of a state which does not comply with the rules that apply in the state; and
3. Unreported fishing is an activity to catch a fish in the Exclusive Economic Zone of a state which is the operation and data of ship as well as their catch are not reported.

The practice of IUU fishing occurs in marine areas that come under the sovereignty and in the Exclusive Economic Zone (EEZ), conducted by the flag vessel of the coastal state in question itself or by a foreign vessel. Even though it does not regulate IUU Fishing, but relates to the law enforcement at sea, UNCLOS 1982 regulates in general, both in marine areas subject to sovereignty and the EEZ of a state.¹¹

1) Enforcement of Sovereignty over the Territorial Sea

In the event of violation of the coastal state legislation occurring in the territorial sea or inland waters of a state, then in accordance with the sovereignty granted by Article 2 of UNCLOS 1982, the coastal state may enforce its laws and even enforce the criminal law against the vessel on the conditions that the offense

¹¹ Abdul Qodir Jaelani and Udiyo Basuki, 2014, Illegal Unreported and Unregulated (IUU) Fishing: Upaya Mencegah dan Memberantas Illegal Fishing dalam Membangun Poros Maritim Indonesia, *Supremasi Hukum*, Vol. 3 No. 1, Juni 2014, p. 184.

has an impact to the coastal state or disturb the security of coastal states as determined by Article 27 (1) UNCLOS 1982.¹²

Based on Article 27 (1) UNCLOS 1982:

“The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

1. If the consequences of the crime extend to the coastal State;
2. If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
3. If the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State;
or
4. If such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances”.

¹² *Ibid.*

The extent of the authority of the coastal State to enforce its laws for foreign vessel in violation of law in the territorial sea, or inland waters (complying with Article 27 (1) of UNCLOS 1982) is the embodiments of territorial jurisdiction.¹³

2) Law Enforcement in Exclusive Economic Zone (EEZ)

The main provisions in the United Nations Convention on the Law of the Sea (UNCLOS) on EEZ are contained in five-part. Since 1976, that the idea of EEZ has been so enthusiastically accepted by the majority of UNCLOS. Universally UNCLOS states member have acknowledged the existence of EEZ without having to wait for UNCLOS to be enacted or to impose conventions, it has universally been established that the EEZ has an area of 200 miles.¹⁴

In relation to the law enforcement of coastal state in EEZ, Article 73 of UNCLOS 1982 regulates as follows:¹⁵

¹³ *Ibid.*

¹⁴ Yudi Dharma Putra, 2015, “Tinjauan Tentang Penegakan Hukum Tindak Pidana Penangkapan Ikan Secara Illegal di Wilayah Zona Ekonomi Eksklusif Indonesia”, taken from <https://media.neliti.com/media/publications/35677-ID-tinjauan-tentang-penegakan-hukum-tindak-pidana-penangkapan-ikan-secara-illegal-i.pdf>, downloaded on Friday, March 3rd, 2017 at 7:30am, p. 4.

¹⁵ Article 73 UNCLOS 1982

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

From the explanation above it can be understood that based on the provisions of Article 73 UNCLOS 1982, when foreign vessel do not comply with the legislation of coastal states in the EEZ, the coastal states may take any measures, including boarding, inspection, arrest, and judicial proceedings and notify the flag state

vessel as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this convention. However, the ship and the crew shall be released with the reasonable bond given to the coastal state, and the punishment given to the foreign vessel shall not be in the form of corporal punishment or prison.¹⁶

d. The Provisions of the United Nations Convention on the Law of the Sea 1982

1) UNCLOS 1982 Regulations relating to the Sovereignty over the Territorial Sea

In Chapter II UNCLOS 1982 contains provisions governing two maritime zones that are under the sovereignty of the coastal state, namely inland waters and territorial sea. In terms of international law, there are two ways to explain the concept of sovereignty at sea: first, sovereignty is seen in relation to the maritime zone, where a coastal state has sovereignty over inland waters, archipelagic waters and territorial sea. Second, sovereignty is associated with the jurisdiction of a coastal state.

In the Article 2 Paragraph 1 UNCLOS 1982 stated that the sovereignty of a coastal State extends, beyond its land territory

¹⁶ Usdawadi Amir, 2013, *Op. Cit.*

and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.¹⁷ According to Paragraph 2 that the sovereignty of the coastal state includes also the airspace above and the seabed and subsoil including the resources contained therein, especially fish resources.¹⁸

The sovereignty of the coastal state over the territorial sea shall be carried out in accordance with the provisions of UNCLOS 1982 and other international law rules. The sovereignty of a coastal state over the territorial sea is absolute and complete,¹⁹ even though it is limited by international obligations arising from the provisions of customary international law and international.²⁰

¹⁷ Article 2 Paragraph 1 UNCLOS 1982

¹⁸ Ian Brownlie, 2008, *Principle of Public International Law*, New York, Oxford University Press, p. 174

¹⁹ Commander Stephanie Moles, 2003, *The Law of the Sea Convention 1982 and the Refugee Convention 1951 Provisions: How They Might Impact on Extant Australian Government Policy concerning Illegal Immigration*”, Department of Defence of the Australian Government, Canberra, Australia, p. 60.

²⁰ D.J Harris, 2004, *Cases and Materials on International Law*, London: Sweet & Maxwell, p. 386.

2) The Provisions of the United Nations Convention on the Law of the Sea 1982 Concerning the Withdrawal of the Lines in Establishing the Territorial Sea Width of a Coastal State

Article 5 of UNCLOS 1982 contains provisions concerning the low water marked as a normal base line. Article 5: "Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial waters is marked on the large-scale charts officially recognized by the coastal State."²¹

In Article 7 of UNCLOS 1982 set the straight base line as a way of drawing the base line which can be done in certain circumstances. As pointed out in the previous chapter, this method of withdrawal was recognized in the 1951 International Court of Justice's decision in the Anglo-Norwegian Fisheries Case.²²

Based on the Article 15 UNCLOS 1982 states that where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the

²¹ Article 5 UNCLOS 1982

²² Dikdik Mohammad Sodik, *Op. Cit.*, p. 23.

baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.²³

Even though the method of division leads to an equidistant division, but in practice it is not necessarily possible to do so. As for example on the procedure of determining the territorial sea border between Indonesia-Malaysia in the southern Malacca Strait and the territorial sea border between Indonesia-Singapore in the Singapore Strait. The issue of the division will return to the issue of agreement between the two parties on the procedure of determining the points of the base of the territorial sea of each country.²⁴

3) The Provisions of the United Nations Convention on the Law of the Sea 1982 Applicable to All Foreign Ships

Although the coastal state has sovereignty in the territorial sea, but in this sea, other countries still have the right of innocent passage. As stipulated in Article 17 UNCLOS 1982 “Subject to

²³ Article 15 UNCLOS 1982

²⁴ Dikdik Mohammad Sodik, *Op. Cit.*, p. 26.

this Convention, ships of all States, whether coastal or landlocked, enjoy the right of innocent passage through the territorial sea”.²⁵

Article 18 explained the meaning of passage in Paragraph 1 and 2 as follows:²⁶

1. Passage means navigation through the territorial sea for the purpose of:
 - (a) Passing that sea without entering internal waters or calling at a roadstead or port facility outside internal waters; or
 - (b) Proceeding to or from internal waters or call at such roadstead or port facility.
2. Passage shall be continuous and expeditious. However, passage include stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure distress or for the purpose of rendering assistance to person, ship or aircrafts in danger or distress.

Based on the above description it can be argued that the definition of cross which is the first essential element for the

²⁵ Article 17 UNCLOS 1982

²⁶ Article 18 UNCLOS 1982

understanding of cross-peace is navigating through the territorial sea for the purpose of crossing the sea without entering the inland waters or anchored in the middle of the sea or port facilities outside the inland waters.²⁷ It can be affirmed that the cross so far as it is related to the normal navigation, or needs to be done in a state of force, having trouble, help the people, and the ship is in danger or distress.

2. The Law Enforcement on Illegal Fishing in Indonesian Sea under Indonesian Law

Indonesia is an archipelagic state with most of its territory made up seawater area which have huge and diverse fisheries potential. Fisheries potential is an economic potential that can be utilized to improve national economy and national development.

The Indonesia's geographical location provides advantages for the country. Indonesia inevitably must be active in international forums in the maritime field including the law of the sea. The condition cannot be separated from the interests of the Indonesian nation in the field of politics, economy, social, culture, defense and security.

The problems that arise and potentially disrupt the national economy of Indonesia in utilizing fishery and marine resources is the practice of

²⁷ Dikdik Mohammad Sodik, *Op. Cit.*, p. 28

illegal fishing by fishermen using foreign fishing vessels and fishing gear that can damage the marine ecosystem, which now poses as the biggest threat to the country.²⁸

Relating to the Indonesian maritime potential, there are three types of marine that are important for Indonesia to be managed, namely:²⁹

1. The sea which is the territory of Indonesia, namely the territorial sea under Indonesian sovereignty;
2. Sea under the authority of Indonesia, which is a marine area where Indonesia has sovereign rights over its natural resources and powers to regulate certain things;
3. Sea which is the interest of Indonesia, meaning that Indonesia has a link with the territorial sea even though Indonesia has no sovereignty or sovereign rights over the territorial sea.

a. Illegal Fishing in Indonesian Waters

²⁸ Yusuf Istanto, Penenggelman Kapal Pelaku Illegal Fishing Sebagai Upaya Penegakan Hukum Perikanan di Indonesia (Studi Putusan Nomor 4/PID.SUS-PRK/2014/PN TPG Pengadilan Negeri Tanjungpinang), taken from [http://download.portalgaruda.org/article.php?article=386979&val=8521&title=EVALUASI%20PERFORMANSI%20PENAMBAHAN%20GUIDE%20VANE%20PADA%20PENAMPANG%20CIRCULAR%20MITER%20BEND%20300%20DENGAN%20STUDI%20NUMERIK%20\(%20STUDI%20KASUS%20REYNOLDS%20NUMBER%20ReDh%204,744%20107%20\)](http://download.portalgaruda.org/article.php?article=386979&val=8521&title=EVALUASI%20PERFORMANSI%20PENAMBAHAN%20GUIDE%20VANE%20PADA%20PENAMPANG%20CIRCULAR%20MITER%20BEND%20300%20DENGAN%20STUDI%20NUMERIK%20(%20STUDI%20KASUS%20REYNOLDS%20NUMBER%20ReDh%204,744%20107%20)), accessed on Saturday, March 4th, 2017 at 10:30am.

²⁹ Simela Victor Muhammad, 2012, “Illegal Fishing di Perairan Indonesia: Permasalahan dan Upaya Penanganannya Secara Bilateral di Kawasan”, *Politica*, Vol. 3 No. 1, Mei 2012, p. 66.

Indonesia has vast territorial waters with big marine resources has important significance for Indonesia because it contains fishery resources that have great potential as a source of new economic growth and become one of the primary mover of national development. As the world's largest marine and archipelagic country, Indonesia has a marine area of about 5.8 million km² (75 percent of the total area of Indonesia) consisting of 0.3 million km² of territorial marine waters; 2.8 million km² of marine waters of the archipelago; and 2.7 million km² of sea of Indonesia Exclusive Economic Zone. In the vast territorial waters of Indonesia it contains large fishery resources.³⁰

The abundance of fishery resources in Indonesia's marine waters has attracted the attention of foreigners to be able to enjoy fish illegally through illegal fishing activities. The illegal fishing activities are carried out by foreign fishermen from neighboring countries entering Indonesian waters illegally. Through various ways of operation the foreign fishermen are fishes in Indonesian waters and conduct trading outside Indonesia to gain more. The illegal fishing has cost the country financially, as it has significantly reduced productivity

³⁰ *Ibid.*

and catch, and it also has threatened Indonesia's marine fisheries resources.

Data on the results of the operation of the supervisory ship noted that during the period 2014 supervisory apparatus from the Directorate General of Marine and Fishery Resources Control has managed to capture 39 illegal vessels, 16 of them foreign ships. While in 2015, the Ministry of Marine Affairs and Fisheries has succeeded in capturing 13 foreign ships from 36 illegal vessels successfully examined.³¹

Table 1

IUU Fishing Vessel that Arrested in 2010-2015

	Year	Indonesia n Vessel	Foreign Vessel	Total	Number of surveillanc e vessel
Arrested Vessel	2010	24	159	183	24
	2011	30	76	106	25
	2012	42	70	112	26
	2013	24	44	68	26

³¹ Mina Bahari, 2015, "Komitmen Serius Pemerintah Perangi Illegal Fishing", taken from <http://kkp.go.id/wp-content/uploads/2016/07/mina-bahari-edisi-1.pdf>, downloaded on Saturday, March 4th, 2017 at 10:50am, p. 15.

	2014	23	16	39	27
	2015 - (12 Maret)	23	13	36	27
	Total	166	378	544	

Source: Ditjen PSDKP, 2015

Based on the data above revealed that illegal fishing activities conducted by foreign fishing vessels in Indonesian waters has been decreased from year to year. The waters around West Kalimantan has become one of the most attractive places for foreign fishing vessels to conduct illegal fishing activities. Illegal fishing activities are mostly done in Indonesia Exclusive Economic Zone (IEEZ), South China Sea and also around West Kalimantan's waters. Foreign fishing vessel generally comes from Thailand, Vietnam, Malaysia, Cambodia, Myanmar, and some from China.

b. The Causes of Illegal Fishing in Indonesian Waters

Causes of illegal fishing activities in Indonesian waters namely:³²

1. Limited facilities and monitoring infrastructure;
2. Limited funds for supervisory operations;

³² Simela Victor Muhammad, *Op. Cit.*

3. Limited police officers of fisheries and Civil Service Investigators
4. The limited ability of Indonesian fishermen to utilize the potential of fishery in Indonesian waters, especially in Exclusive Economic Zone (EEZ);
5. The need for raw material resources in the country of illegal fishing actors has been dwindling due to industrialization practices, so that the growth of fish is not proportional to the number of captured, and as a result, they expand into Indonesian territory;
6. The ability to monitor every marine patrol surveillance vessel can be detected by foreign fishing vessels due to sophisticated communication tools, resulting in poor operation.

The extent of territory and the extent of fishery court with the occurrence of illegal fishing is also one factor causing the increase of illegal fishing. Due to the problem of distance sometimes the case is not resolved on time and the state losses cannot be saved. The occurrence of illegal fishing is also triggered by the needs and demand of certain fish stocks that have high economic value.

Illegal fishing is done in the area of Indonesia Exclusive Economic Zone by foreign vessels that have advanced fishing

technology. Even more foreign vessels have been equipped with various devices to support the storage and processing of fish to keep them fresh and promote a high economic value when sold on the international market.³³

When foreign vessels which is illegal fishing in Indonesia by using sophisticated tools, it means that the perpetrators of illegal fishing has paid attention to the potential of Indonesia's marine fishery resources. The vast territorial waters of Indonesia with all the limitations of its monitoring facilities and infrastructure do not seem to be an obstacle for illegal fishing actors to continue their illegal activities in Indonesian waters.

c. Indonesia's Effort Against Illegal Fishing in Indonesian Sea

The strategic role of Indonesia's marine as the world's largest fishery production increased because of the threat by IUU Fishing, and fishing activities that damages the environment causing a reduction in the number of fish populations in the territory of Indonesia. The impact is felt on the decline in the number of catches by fishermen and fishing areas that are increasingly expanding into the open seas. As a result many traditional fishermen are switching to

³³ *Ibid.*

using environmentally unfriendly fishing gears such as trawlers to reach the area.³⁴

Handling illegal fishing requires legislation as a guideline in cracking down on the perpetrators. The Indonesian government has issued Law No. 45 Year 2009 in conjunction with Law No. 31 Year 2004 on Fishery, this matter aims to the perpetrators of illegal fishing to be dealt in accordance with the rules.³⁵

The enactment of Law No. 45 Year 2009 in conjunction with Law No. 31 Year 2004 on Fishery, the various legal provisions concerning supervision is quite comprehensive, especially in terms of granting more and more strict supervisory authority, such as stopping, checking, arresting, carrying and holding.³⁶ To combat illegal fishing practices, President Joko Widodo has ordered that field supervisors can act decisively, if necessary by sinking foreign vessels which catch

³⁴ Mina Bahari, *Op. Cit.*, p. 14.

³⁵ Saddam Arief, “Bab III Upaya Indonesia Mengatasi Illegal Fishing di Tingkat Nasional”, taken from https://www.academia.edu/5352899/BAB_III_UPAYA_INDONESIA_MENGATAS_I_ILLEGAL_FISHING_DI_TINGKAT_NASIONAL, accessed on Saturday, March 4th, 2017 at 11am.

³⁶ *Ibid.*

a fish in Indonesian waters. This is certainly conducted in accordance with the rules and procedures applicable.³⁷

The law applied by the Indonesian government in combating criminal acts in the field of fisheries, namely Law No. 45 Year 2009 in combating illegal fishing crime in Indonesian waters. The process of handling cases in the fishery crime by the Government of Indonesia through the Ministry of Fisheries and Marine in coordination with the Navy, Civil Investigators, Marine security agencies, Police and prosecutor are as follows:³⁸

1. Investigation Actions

The investigation is an event to obtain definite and clear information which is the beginning of a criminal offense, Investigation can be done in an open manner as long as it can produce required information. It is an accurate data collection activity so that it becomes clear that a violation event occur in order to find the suspect.³⁹

2. Action

³⁷ *Ibid.*

³⁸ Yudi Dharma Putra, *Op. Cit.*, p. 12.

³⁹ Article 1 Paragraph 2 of the Criminal Code

Action can be done in the area where the violation occurs. The steps that can be done are Preparation and Implementation of Action.

3. Handling of Evidence

Foreclosures are conducted by the order of foreclosure letter in an urgent and necessary condition as it requires immediate action, foreclosure can be done without the permission of the Chairman of the District Court but is limited to movable goods then mandatory inform to the competent authorities (the Chairman of the District Court).

4. Calling

Calling is imposed to the suspect and the person who is at the location of a criminal offense by notifying through notices sent to the suspect or witness by mentioning the reason for the summons as well as a brief description of the criminal offense.

5. Arrest

The arrest is conducted to the suspect and can be conducted to the ship owner company.

6. Detention

The suspect is placed under supervision of the investigator to be continued at the further processing level.

7. Shakedown.

Shakedown is law enforcement by checking against a person or place overall there was a criminal incident which has been organized by the applicable law.⁴⁰

8. Inspection

Inspection is an activity to get information, firmness and perception regarding the evidence and the suspects that are related to the elements of violation act with evidence to clarify a criminal.

9. Completion of examination results

It is the last stage procedure of a criminal offense, the activity consists of the resume preparation in a series of inspection procedures on the suspect and after that decide on a conclusion.

In realizing its commitment to eradicate illegal fishing, the Ministry of Marine Affairs and Fisheries together with the Marine Security Agency 15, Navy, Police, Ministry of Finance, Ministry of Justice and Human Rights and Local Government strive to continue to tighten supervision. The harmonization of these stakeholders is a law enforcement action that will create a deterrent effect for the perpetrators of illegal fishing. Oversight operations at sea, both regular

⁴⁰ Article 32 of the Criminal Code

and combined are now increasingly routines. Currently the number of fleets of supervisory boats amounted to only 27 ships.⁴¹

The Government through the Ministry of Marine and Fisheries issued several policies to prevent illegal fishing, by forming a task force to eradicate illegal fishing. The task force consists of representatives from several agencies, they are: the Ministry of Marine and Fisheries, the Presidential Work Unit for Development Supervision and Control, the Financial Transaction Reporting and Analysis Center, the Directorate General of Customs, the Ministry of Finance, the Ministry of Transportation, Central Bank and the Police.⁴²

Taskforce among them have the task to monitor temporary cessation of capture fishery business permit, verify fishing vessel whose development is done overseas, and calculate state losses due to illegal fishing.⁴³

3. Sinking Vessel as an Effort to Eradicated Illegal Fishing Practice

⁴¹ Mina Bahari, *Op. Cit.*, p. 15.

⁴² Koran SINDO, 2014, Strategi Menanggulangi Pencurian Ikan, taken from <https://nasional.sindonews.com/read/940496/162/strategi-menanggulangi-pencurian-ikan-1419221815>, accessed on Saturday, March 4th, 2017 at 11:10am.

⁴³ *Ibid.*

In order to eradicate illegal fishing in Indonesia the government has issue Ministerial Decree of Marine and Fisheries No. KEP/50/MEN/2012 on National Action Plan for Illegal Prevention and Control, Unreported and Unregulated Fishing (IUU Fishing). Ministerial Decree No. KEP/50/MEN/2012 is a form of application of the Code of Conduct for Responsible Fisheries (CCRF) agreed in 1995 by the Food And Agriculture Organization (FAO) countries on the management and development of an orderly, responsible fishery, And sustained as well as a form of implementation of international action to combat IUU Fishing as outlined in the International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU Fishing) in 2001. The IPOA-IUU Fishing should be followed up by each country, Including Indonesia by preparing IUU Fishing prevention and mitigation action plans at the national level.⁴⁴

The effort to eradicated IUU fishing in Indonesia is conducted as follows:

1. Adopt or ratify international regulations;
2. Review and adjust the national legislation if necessary;

⁴⁴ Ignatius Yogi Widiyanto Setyadi, 2014, Upaya Negara Indonesia dalam Menangani Masalah Illegal Fishing di Zona Eksklusif Indonesia, taken from e-journal.uajy.ac.id/5877/1/JURNAL.pdf, downloaded on Monday, March 13th, 2017 at 7:20pm.

3. Recruit fisheries supervisor and civil service investigators as well as perform
4. Capacity building;
5. Participate actively in RFMO and fisheries organizations
Other international;
6. Take an active role in RPOA-IUU;
7. Establishing a Fishery Court; and
8. Intensify surveillance operations and patrol Shared or coordinated.

The sinking vessel is expected to strengthen and enforce the sovereignty of the country, especially at sea. Actually the sinking vessel is not new, but it has been done since a few years ago. From 2007 to 2012, the Ministry of Marine and Fisheries in this case the Directorate General of Supervision of Marine and Fishery Resources Submission has drowned about 38 foreign vessels which were proven conduct illegal fishing.⁴⁵

Sinking vessel policy certainly raises the response whether this action violates the law or not. According to Hikmahanto Juwana, there are five reasons why the policy is actually worthy of support, as follows:⁴⁶

⁴⁵ Mina Bahari, *Op. Cit.*, p. 16.

⁴⁶ Sherief Maronie, 2016, "Penenggelman Kapal dalam Undang-Undang Perikanan", taken from <http://www.hukumpedia.com/smaronie/penenggelman-kapal-dalam-undang-undang-perikanan>, accessed on Thursday, April 20th, 2017 at 9am.

1. The drowned foreign vessel is a vessel that has no license to catch fish in Indonesian territory. It is considered a criminal act. This means that the previously sinking vessel has gone through litigation and has been legally enforceable that the person is guilty.
2. The act of sinking is done in the territory of sovereignty and sovereign rights of Indonesia (Exclusive Economic Zone).
3. The act of sinking is done based on legitimate law, namely Article 69 Paragraph (4) of the Fisheries Law 2009.
4. The other countries must understand that Indonesia is harmed by such criminal acts. If continue to be left then the losses experienced will be greater.
5. The reason is of course the process of drowning also pay attention to the safety of the crew.

As a form of efforts to eradicate illegal fishing practices, President Joko Widodo has ordered to sink a foreign vessel that stole fish in Indonesian waters. The instruction issued by the President to take firm action against the perpetrators of illegal fishing in the territorial waters of Indonesia one of them is done by sinking vessel based on Article 69 Paragraph (1) and Paragraph (4) on Fisheries Law.⁴⁷

Based on the Article 69 Paragraph 1 on Fisheries Law:

⁴⁷ Zaqiu Rahman, *Op. Cit.*

"The function of Fishery supervisory boats is to carry out supervision and law enforcement in the field of fishery in the territory of fisheries management of the Republic of Indonesia; Further in carrying out such functions the fishery investigator and / or supervisor may take special action in the form of burning and / or sinking of a foreign flagged fishing vessel on the basis of sufficient evidence."

The explanation of Article 69 Paragraph 4 on Fisheries Law concerning "sufficient evidence", namely:

"Referred to as "sufficient evidence" is a preliminary evidence to suspect a criminal offense in the field of fisheries by a foreign-flagged fishing vessel, for example a foreign flag fishing vessel does not have a fishing license, as well as real actually catch and / or transport fish while In the territory of the Republic of Indonesia."

The provision of Article 69 Paragraph 4 of the Fisheries Act indicates that such special measures cannot be carried out arbitrarily, but only if fishery investigators and/or supervisors are convinced that the foreign vessel is actually committing a criminal offense in the field of fisheries. There are several conditions that must be fulfilled when the specific action will be taken. The terms include the subjective requirements of the ship to maneuver that endanger the captain and the crew members to fight the violence. As well as objective terms consisting

of the cumulative requirement of foreign-flagged vessels with all foreign crew, the scene in the Indonesian fishery management territory, having no document whatsoever from the Indonesian government, is carried out with the principle of prudence and by the order of the leader.⁴⁸

Prior to any special action, the officer must first perform the evacuation of the crew, inventory all equipment and equipment of the ship, take documentation, put aside the fish as evidence, and make the news event. This is stipulated in Standard Operating Procedures (SOP) of Criminal Crime Handling which is an inseparable attachment of the Joint Agreement between the Ministry of Maritime Affairs and Fisheries of RI with the Police of the Republic of Indonesia and the Indonesian Armed Forces of the Navy.⁴⁹

B. The Law Enforcement on Illegal Fishing by Foreign Vessel in Indonesia Exclusive Economic Zone

1. Case of Arresting of Foreign Vessel that is Conduct Illegal Fishing in Indonesia Exclusive Economic Zone

a. The Case of Arresting Malaysian-flagged Ships in the Strait of Malacca

⁴⁸ Sherief Maronie, *Op. Cit.*

⁴⁹ *Ibid.*

Illegal fishing activities still occur in Indonesian waters even though the government has imposed strict sanctions on violators. The Fishery Supervisory Boat captured two Malaysian-flagged foreign fishing vessels in Indonesian waters on February 16 and 18, 2017. Both ships were caught conducting illegal fishing in Indonesian marine areas. Ship Supervisory Hiu 004 captured a Malaysian-flagged ship SLFA 5066 in the waters of the Strait of Malacca without fishing license.⁵⁰

From these two vessels, the evidence of catches and fishing gear which is a fishing tool forbidden in the form of Trawling (trawling tiger) were successfully secured. Both were also arrested for not having a Fishery Business License and Fishing Permit from the Indonesian government. Of the 10 crew members, three of their captains have been declared suspects because the three captains are the peoples who the most responsible, while others are deported.⁵¹

⁵⁰ Alfian Kartono, 2017, “Dua Kapal Berbendera Malaysia Ditangkap di Perairan Selat Malaka”, taken from <https://www.infonawacita.com/2-kapal-ikan-berbendera-malaysia-ditangkap-di-perairan-selat-malaka>, accessed on Sunday, March 13th, 2017 at 7:15pm.

⁵¹ *Ibid.*

b. The Case of Arresting Vietnamese-flagged ship in Sorong Waters Area, West Papua

Supervising Indonesian waters officers also arrested Vietnamese-flagged vessels in the waters of Sorong, West Papua. Vietnamese-flagged vessels entered Indonesian territorial waters without a fishing license and had no shipping documents and were caught fishing using explosives. The Indonesian government took the policy of deporting the twelve Vietnamese fishermen who violated the illegal fishing. This policy was taken due to several factors, such as the bilateral relationship between Indonesia-Vietnam which has been well established is expected to be uninterrupted because of this factor.⁵²

Case Analysis

The rules on violations in the Indonesian marine territory are clearly stated in the Indonesian Fisheries Law but in practice they are still weak and inconsistent. So, that neighboring countries are still conducting illegal fishing in Indonesian waters. This is very contrary to the national action plan contained in Ministerial Decree No. KEP/50/MEN/2012 on the National Action Plan of Prevention and Mitigation of Illegal, Unreported and Unregulated Fishing (IUU

⁵² Ignatius Yogi Widiyanto Setyadi, *Op. Cit.*

Fishing).⁵³ In the Ministerial Decree one of them mentioned that Indonesia will increase consistency in applying sanctions for perpetrators of IUU Fishing.

If it is reviewed from Law No. 45 Year 2009 that illegal fishing perpetrators conducted by foreign ships will be dealt with in the form of sinking vessel if it is found the sufficient evidence as stated in Article 69 Paragraph 4 Law No. 45 Year 2009. Inconsistent attitude of Indonesia in applying sanctions to the perpetrators of cases of illegal fishing in the territorial waters of Indonesia can be seen from the actions taken Indonesia in the case of Malaysian and Vietnamese fishermen above.

From two cases above are carefully viewed in the same way that both Malaysian and Vietnamese-flagged vessels both enter the territory of ZEE Indonesia without permission from the Indonesian government accompanied by fishing by means of illegal fishing gear. But in processing the case Indonesia implemented different policies.

2. The Case of Sinking Vessel

⁵³ Ministerial Decree No. KEP/50/MEN/2012 on National Action Plan for Illegal Prevention and Control, Unreported and Unregulated Fishing (IUU Fishing).

Minister of Marine Affairs and Fisheries noted that throughout 2016 Indonesia has drowned 236 foreign and illegal local vessels that conduct illegal fishing in Indonesian waters. The illegal foreign vessel that has been drowned is dominated by ships from Vietnam with a total of 96 ships.

Table 2

Sinking Vessel throughout the Year 2016	
State	Total
Vietnam	96
Philippines	58
Thailand	21
Malaysia	38
China	1
Papua Nugini	2
Indonesia	15
Belize	1
Without a flag	4

Source: Iwan Supriyatna, 2017, taken from <http://ekonomi.kompas.com/read/2017/01/17/165433626/menteri.susi.236.kapal.pencuri.ikan.ditenggelamkan.sepanjang.2016>, accessed on Monday, March 13th, 2017 at 8pm.

The Ministry of Marine Affairs and Fisheries assisted by Indonesian national army and Police conducted the sinking in twelve locations, as follows: Aceh, Pontianak, Bali, Sorong, Merauke, Belawan,

Tarempa, Natuna, Tarakan, Bitung, Ternate and Ambon. Of the 81 ships to be drowned, 46 vessels are known to be Vietnamese ships, 18 Philippine ships, 11 Malaysian ships and 6 Indonesian ships.⁵⁴

A total of 46 vessels have been decided to be based on decisions that have legal permanent and 35 others are set based on court decisions. While one vessel, namely SINO 36 (268 GT, an Indonesian flag) was based on the decision seized for the state. The government will transform the vessels into monuments to depict Indonesia's efforts to eradicate Illegal, Unreported, and Unregulated Fishing (IUU Fishing).⁵⁵

3. The Impact of Sinking Vessel

The act of sinking illegal vessels is basically not a new policy from the Indonesian government, because this policy has been done during the governance of Megawati Sukarnoputri. It is known that one of the functions of the application of legal sanctions is to arise a deterrent effect on the offender. The weakness of law enforcement has occurred because it is not

⁵⁴ Fabian Januarius Kuwado, 2017, "81 Kapal Pencuri Ikan Ditenggelamkan di Penjuru Indonesia", taken from <http://nasional.kompas.com/read/2017/04/01/12003881/lagi.81.kapal.pencuri.ikan.ditenggelamkan.di.penjuru.indonesia>, accessed on Monday, March 13th, 2017 at 8pm.

⁵⁵ *Ibid.*

oriented to the deterrent effect that can be considered as a contribution to the state indirectly to the development of the crime that occurred.⁵⁶

The sinking foreign vessel policy to vessels that commit illegal fishing has a positive impact and negative impact to Indonesia. The positive impact of this policy is that the Indonesian government can stop the illegal fishing activity and save marine habitat in the sea from the danger of foreign fishing vessels. In addition, this policy also provides benefits for local Indonesian fishermen. Under this policy, foreign fishing vessels that will commit illegal fishing in Indonesian seas will think twice about it.⁵⁷

Meanwhile the negative impacts obtained from the policy of sinking the ship is that the Indonesian government must provide sanctions and repatriate foreign fishermen to their respective countries. The government also has to pay a lot of money to repatriate foreign fishermen. Another negative impact would be result in pollution from blasting and burning of foreign fishing vessels that can contaminate the air.⁵⁸

⁵⁶ Yordan Gunawan and Muhammad Arizka Wahyu, *Op. Cit.*, p. 478

⁵⁷ Kelompok Studi Kelautan Fakultas Biologi UGM, 2016, “[Sahabat Nelayan] Kebijakan Tentang Penenggelaman Kapal Asing Illegal Sebagai Bentuk Sikap Anti Illegal Fishing di Indonesia”, taken from <https://kskbiogama.wg.ugm.ac.id/2016/03/31/sahabat-nelayan-kebijakan-tentang-penenggelaman-kapal-asing-ilegal-sebagai-bentuk-sikap-anti-illegal-fishing-di-indonesia/>, accessed on Monday, April 3rd, 2017 at 4pm.

⁵⁸ *Ibid.*

Based on the explanation in the previous pages, it can be concluded that Illegal fishing is a problem that often occurs in many countries and becomes one of the problems for countries that has many islands. Indonesia is one of the countries that has many islands and illegal fishing activities that occur in Indonesian waters has become a common problem. Moreover, Indonesia is located in a strategic geographical location where the boundary of Indonesian waters can be reached by neighboring countries directly.

As a result of illegal fishing activities Indonesia's loss continues to increase from year to year. Indonesia loses US \$ 20 billion or equivalent to IDR 240 trillion per year due to illegal fishing. The amount is not a little amount, illegal fishing activity is very detrimental to Indonesia and it is a big problem that should be eradicated.

In enforcing the law to deal with cases of illegal fishing, a number of legal regulations were enforced. The international law of the sea also regulates in this regard, UNCLOS 1982 does not regulate illegal fishing, the discourse on illegal fishing emerged in the framework of IUU Fishing practices at the Commission for Conservation of Atlantic Marine Living Resources (CCAMLR) forum. Even though UNCLOS 1982 does not regulate illegal fishing, it relates to the law enforcement at sea UNCLOS 1982 which regulates generally on sovereignty over the territorial sea and the enforcement in Exclusive Economic Zone.

Relating to the law enforcement of sovereignty over the territorial sea that is regulated in Article 2 UNCLOS 1982, The coastal state may enforce all its laws and even criminal law against foreign ships which is conducted in illegal fishing in the territorial sea of a coastal states on condition the violations have an impact on the coastal state or disrupt the security of the coastal state as defined in Article 27 Paragraph (1) UNCLOS 1982. And relating to the law enforcement in Exclusive Economic Zone regulated in Article 73 UNCLOS 1982, it states that the coastal states may take any measures, including boarding, inspection, arrest, and judicial proceedings as well as the ship and crew shall be released with the reasonable bond given to the coastal state.

Indonesian law that regulates the illegal fishing specifically is Law No. 45 Year 2009 in conjunction with Law No. 31 Year 2004 on Fishery. The various legal provisions concerning supervision are quite comprehensive, especially in terms of granting more and more strict supervisory authority, such as stopping, checking, arresting, carrying and holding.

In order to combat illegal fishing activities, the Indonesian government has ordered that field supervisors can act decisively to the illegal fishing perpetrators by sinking foreign vessels which catch a fish in Indonesian waters. The sinking vessels has regulated based on Law No. 45 Year 2009 in Article 69 Paragraph 1 and Paragraph 4.

In that Article it was stated that further carrying out such functions, the fishery investigator may take a special action in the form of burning and/or sinking of foreign flagged fishing vessel based on sufficient evidence.