

## **FOREIGN VESSEL SINKING POLICY IN ERADICATING ILLEGAL, UNREPORTED, AND UNREGULATED (IUU) FISHING IN THE INDONESIAN EXCLUSIVE ECONOMIC ZONE (IEEZ)**

**Richard Al Khalik, Nellyana Roesa**

Faculty of Law, Syiah Kuala University, Indonesia  
Jl. Putroe Phang, No. 1, Darussalam, Banda Aceh – 23111  
Tel./Fax: +62-651-7552295 e-mail: [richard@mhs.unsyiah.ac.id](mailto:richard@mhs.unsyiah.ac.id)

### **ABSTRACT**

The relevance of foreign vessel sinking policy to eradicate IUU fishing in IEEZ by national regulation to UNCLOS 1982 is questionable. This paper uses a normative legal analysis, examining international conventions and national regulation provisions and their application to legal events. The results indicate that implementing the foreign vessel sinking policy is national law enforcement of Law No. 45 of 2009 amendment to the Law No. 31 of 2004 Concerning Fishery, Article 69 (1) and (4). The foreign vessel sinking policy is not contrary to UNCLOS 1982 because the subject protected in EEZ by Article 73 (3) is the human being, not the vessel. It remains an effective means to create a deterrent effect as an optimum penalty for such crime.

**Keywords:** Foreign Vessel Sinking Policy, IUU Fishing, The Indonesian Exclusive Economic Zone

### **INTRODUCTION**

Illegal, Unreported, and Unregulated (IUU) fishing is a broad phrase encompassing a wide range of fishing practices. IUU fishing happens in all types and sizes of fisheries, on the high seas, and in regions within the national authority. It encompasses all elements and phases of fish acquisition and exploitation, and it's occasionally linked to unusual or organized transnational crime.<sup>1</sup>

IUU Fishing afflicts Indonesia and permeates the entire world's waters globally, from coastal waters to sea fishing grounds that increased.<sup>2</sup> It believes that it has contaminated 78% of the area of the sea.<sup>3</sup> It was included in the 25th Committee on Fisheries (COFI) of the Food and Agriculture Organization of the United Nations (FAO UN) closing statement in March 2003. "IUU fishing and its impact on resource sustainability is an issue of international concern," according to COFI members.<sup>4</sup> The Global fisheries are on the verge of collapse. Estimating IUU fishing levels is a challenge for FAO. According to the most recent worldwide estimates, the global catch of illegal

---

<sup>1</sup> FAO, "Illegal, Unreported and Unregulated (IUU) fishing", Accessed by <https://www.fao.org/iuu-fishing/background/what-is-iuu-fishing/en/> (07 July 2021)

<sup>2</sup> FAO. "The State of World Fisheries and Aquaculture (2008)". Rome. 2009. P. 176.

<sup>3</sup> *Ibid.*

<sup>4</sup> FAO. "Strong Support for Firmer Action against IUU Fishing" (Press Release, 3 March 2003). 2003. Accessed by <http://www.fao.org/english/newsroom/news/2003/14660-en.html> (07 July 2021)

and unreported fish is between 11 and 26 million tonnes. IUU fishing is responsible for up to 20% of world catches and 50% in particular fisheries.<sup>5</sup>

IUU fishing by foreign vessels in Indonesian water occurs mainly in the Exclusive Economic Zone (EEZ) and extensively in archipelagic waters. Several forms of illegal fishing activities are often carried out, such as catching fish without a permit, violating applicable fisheries laws, counterfeiting goods, transshipment at sea, turning off generators, and fishing using chemicals and explosives. That causes fish stocks to decrease.<sup>6</sup>

The nations have a high level of IUU fishing, related to several causes. First, the area of the direct border with the EEZ of other countries makes it easy for fishers to enter the country's territory. Neighboring EEZ states, *second*, the absence of oversight over fishing vessel registration and licensing, and *third*, Sanctions are not working because they are being applied ineffectively. It is still lightly for operators of IUU fishing because more actors of their government and large employers support them primarily.<sup>7</sup>

Several international legal instruments exist to realize sustainable fisheries, such as UNCLOS 1982, FAO Compliance Agreement 1993, United Nations Implementing Agreement (UNIA) 1995. FAO has issued a Port State Measures Agreement (PSMA) in a recent development, which is not yet effective because Indonesia only signed it in 2016. FAO in 2012 has also declared that IUU fishing is a Transnational Organized Crime (TOC). The facts in IUU fishing are already an extraordinary or organized transnational crime.

Several international legal guides in eradicating IUU fishing practices, including the Code of Conduct for Responsible Fisheries (CCRF) 1995 and the United Nations Fish Stock Agreement (UNFSA) 1995, are available in addition to the international legal instruments mentioned above. The International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUU) was developed by the FAO Committee on Fisheries (COFI) as a follow-up to the CCRF 1995 as advice in dealing with IUU fishing concerns. As a result, FAO member nations are invited to include this IPOA-IUU in their National Action Plans (NPOA).

UNCLOS 1982 was ratified by the Indonesian government through Law No. 17 of 1985 concerning UNCLOS 1982, Law No. 5 of 1983 concerning the Indonesian Exclusive Economic Zone (IEEZ), and Law No. 21 of 2009 concerning Ratification of the Agreement For The

---

<sup>5</sup> Sjarief Widjaja, Tony Long and Hassan Wirajuda. "Illegal, Unreported and Unregulated Fishing and Associated Drivers". HLP World Resource Institute: Blue Paper. 2020. P. 10.

<sup>6</sup> Rohmin Dahuri. "Aspek Hukum Penanganan Tindak Pidana Perikanan". Makalah Dilkat Teknis Penanganan Tindak Pidana Perikanan Angkatan II. Pusdiklat Kejaksaan RI, 2013. P. 2

<sup>7</sup> Rachel Baird. "Transnational Security Issues in The Asean Maritime Environment: Fisheries and Piracy". Paper delivered to Sino-Australian Joint research Program, Collaboration and Governance in The Asia Pacific, 2010.

Implementation of UNCLOS 1982 Provisions Relating To The Conservation And Management Of Straddling Fish Stocks And Highly Migratory Fish Stocks by UNIA 1995. The Indonesian government must incorporate the terms of the treaties into national regulations as a legal consequence of ratification.

The Indonesian government has amended Law Number 31 of 2004 concerning Fisheries and Law Number 45 of 2009 concerning fisheries using UNCLOS 1982 as the primary material in eradicating IUU fishing.<sup>8</sup> To implement these regulations, the Indonesian government has implemented regulations in a Regulation of the Ministry of Marine Affairs and the Fisheries Republic of Indonesia (MMAF) to realize fisheries sustainability in general and eradicate IUU fishing in particular.

While the national definition of illegal fishing is "fishery activities carried out in violation of the requirements of the legislation in fisheries," IUU fishing is "fishery activities carried out in violation of the provisions of the legislation in fisheries." In this context, any fishing activity that breaches Law No. 45 of 2009 modifying Law No. 31 of 2004 addressing fisheries is referred to as IUU fishing. This legislation established a unique judicial system for dealing with fishery offenses, with processes outlined in the work unit.

The South China Sea, North Sulawesi, and the Arafura Sea are the most vulnerable locations in Indonesia to IUU fishing. In addition, the level of control by the relevant security forces is still deficient. According to rough estimates, IUU fishing accounts for at least 30% of worldwide fisheries harvest.<sup>9</sup> According to Article 5 (1) of Law No. 45 of 2009 Amendments Law No. 31 of 2004, the Fisheries Management Area of the Republic of Indonesia (FMA-RI) can be economically used by fishers, including the Indonesian sea, special economic zones, rivers, lake, reservoir, marshes and other bodies of Indonesian water. Article 1 of MMAF No. 18/Permen-KP/2014 Regulation clarifies FMA-RI is a fishery management area for fishing, fish cultivation, conservation, research, and fishery development, including inland waters, archipelagic waters, territorial seas, additional zones, and IEEZ.<sup>10</sup>

Indonesia is confronted with IUU fishing operations that generate overfishing symptoms due to poor monitoring actions in Indonesian territorial seas and IEEZ. Several neighbors to Indonesia

---

<sup>8</sup> Ariatno, "Indonesia Interest In Free Marine Fisheries Management", Indonesia Journal of International Law, 2005, 2 (3). P. 503-544.

<sup>9</sup> G. A. Wagey, S. Nurhakim, V.P.H. Nikijuluw, Badrudin, and Tj. Pitcher. "A Study of Illegal, Unreported and Unregulated (IUU) Fishing in the Arafura Sea, Indonesia". Ministry of Marine Affairs and Fisheries: Research Center for Capture Fisheries. 2009. P. 4.

are the four main actors in IUU fishing activities in Indonesian waters and the IEEZ, including Malaysia, Vietnam, Myanmar, Thailand, the Philippines, and China.

Indonesia has the world's highest Mega-Biodiversity with a marine wealth worth of IDR 1,772 trillion. IUU fishing costs the Indonesian government roughly IDR 101 trillion per year.<sup>11</sup> The national marine surveillance capability is still not maximized. It is prone to IUU fishing in Indonesian jurisdictions, so the abundance of fishery resources in Indonesian waters attracts the attention of foreign parties who want to use them illegally through IUU fishing activities.

The Indonesian Navy, the Indonesian Marine Police, the Maritime Security Agency/BAKAMLA, and the Attorney General's Office of the Republic of Indonesia all assist MMAF in preserving Indonesian fisheries. They are empowered by Article 69 (4) of Law No. 45 2009 to carry their responsibilities to take specific actions, such as sinking foreign fishing vessels.

As a result, Indonesia invokes UNCLOS 1982 Article 56 (1) (a), which provides Indonesia's sovereign right to protect natural resources in its exclusive economic zone. As a result, The Task Force for the Eradication of Illegal Fishing was established by Presidential Regulation No. 115 of 2015, recently published by the Republic of Indonesia (Task Force 115)<sup>12</sup>.

Risk assessment procedures for IUU fishing should develop to target enforcement activities on the most significant risks. Fishery Monitoring, Control, and Surveillance (MCS)<sup>13</sup> procedures should be based on regional/international laws and obligations, cooperation, and inter-agency agreements.<sup>14</sup> UNCLOS 1982 prohibits the use of jail to punish foreigners who engage in IUU fishing in the EEZ. It made Indonesia has been sinking foreign vessels to eradicate IUU fishing. The MMAF maintains a firm stance on foreign vessel sinking policy as an alternative for law enforcement with varied considerations for accused vessels committing IUU fishing.

The government of Indonesia made an effort to eradicate IUU fishing by national regulation on Law Number 45 of 2009 Amendments to Law Number 31 of 2004 concerning Fisheries using UNCLOS 1982 as the primary material.<sup>15</sup> As a country with a sovereign right, Indonesia must take

---

<sup>10</sup> Ministry of Marine Affairs And Fisheries. "National Plan Of Action (NPOA) To Prevent and to Combat Illegal, Unreported, and Unregulated Fishing 2012-2016". Based The Minister of Marine Affairs and Fisheries of Republic Indonesia Decree Number KEP. 50/MEN/2012. P. 5. (<http://extwprlegs1.fao.org/docs/pdf/ins165159.pdf>).

<sup>11</sup> KKP News, "Kerugian Negara Akibat Illegal Fishing, 101 Triliun Rupiah!", Accessed by <https://news.kkp.go.id/index.php/kerugian-negara-akibat-illegal-fishing-101-triliun-rupiah/> (01 Desember 2021)

<sup>12</sup> Task Force 115 is tasked with developing and implementing law enforcement operations to effectively and efficiently eradicate illegal fishing in marine areas under Indonesian jurisdiction by maximizing the use of operational personnel and equipment, including ships, aircraft, and other technology owned by MMAF, Indonesian Navy, Indonesia Marine Police, Maritime Security Agency/BAKAMLA, Attorney General Office of the Republic of Indonesia, Special Task Force for Upstream Fisheries.

<sup>13</sup> MCS is all about ensuring that fisheries management procedures are followed.

<sup>14</sup> Judith Swan. "IUU Fishing and Measures to Improve Enforcement and Compliance", International Ocean Institute Canada: Leiden: Brill, 2019. P. 360.

<sup>15</sup> Ariatno, "Indonesia Interest In Free Marine Fisheries Management", Indonesia Journal of International Law, 2005, 2 (3). P. 503-544.

action against foreign fishers who commit fisheries crimes, especially IUU fishing activities in IEEZ without a license. Any illegal act in Indonesian waters and IEEZ will be carried out by a law enforcement act to provide a deterrent effect.<sup>16</sup>

Based on the background shown above, the question arises about whether the foreign vessel sinking policy to eradicate IUU fishing in EEZ is relevant to UNCLOS 1982. Another aim is to determine the effectiveness of the foreign vessel sinking policy in eradicating IUU fishing in the IEEZ.

## RESEARCH METHOD

This method of research is normative juridical research using a qualitative method with the consideration of the starting point of the study of "The Foreign Vessel Sinking Policy In Eradicating Illegal, Unreported, And Unregulated (IUU) Fishing In The Indonesian Exclusive Economic Zone (IEEZ)". Normative research is legal research that examines provisions in international conventions and legislation and their application to legal events. Normative legal research is finding legal rules, principles, and legal doctrine to answer legal problems at hand.<sup>17</sup>

## FINDING AND ANALYSIS

### 1) Definition of Illegal, Unreported, and Unregulated (IUU) Fishing

IUU fishing is a violation of existing rules and regulations concerning fisheries. One example of a fisherman's actions practicing IUU fishing is catching fishing by gear, which can harm marine ecosystems or fishing with no permit documents or license.<sup>18</sup> IUU fishing refers to the policy and management of fisheries in any maritime fishing operation. It's done in a way breaks the rules regulating the protection and management of local and international fisheries.<sup>19</sup>

IUU fishing is a severe and well-organized crime.<sup>20</sup> Article 3 of the United Nations Convention Against Transnational Organized Crime (UNTOC) 2000 includes it because it involves more than one country, such as the planning, preparation, and effects of a crime involving more than one country. There is no specified definition of IUU fishing under UNCLOS 1982. In the International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated

---

<sup>16</sup> Joko Susanto and Ali Masyhar. "Law Enforcement on Fisheries Crime After the Enactment of Law Number 45 of 2009: A Normative Analysis". Journal of Law and Legal Reform: Vol. 1 No. 1. 2019. P. 112.

<sup>17</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Prenada Media, 2005, P. 3.

<sup>18</sup> Maryani, H. & Nasution, A. 2019. "Rekonsepsi Model Pemberantasan Illegal Fishing di Perairan Indonesia (Analisis Perspektif Hukum Internasional)". Jurnal Legislasi Indonesia. Vol. 16 No. 3, 380-391, P. 383

<sup>19</sup> Rosello, Mercedes. "Illegal, Unreported and Unregulated Fishing Control in the Exclusive Economic Zone: a Brief Appraisal of Regulatory Deficits and Accountability Strategies". CIRJ Journal: Vol. 22 No. 75, 2016, P. 40.

<sup>20</sup> Aji Sularso, "Overfishing, Over Capacity Dan Illegal Fishing (studi kasus laut Arafura)", Jakarta, Kementerian Kelautan dan Perikanan, 2009, P. 51.

Fishing (IPOA-IUU), in the context of implementing the Code of Conduct for Responsible Fisheries, the FAO defines IUU fishing as follows:<sup>21</sup>

1. Illegal fishing is domestic or foreign fishing carried out in waters under the jurisdiction of a country, without the permission of that country or in violation of its laws and regulations, by vessels carrying the flag of the country of the relevant Contracting Party. Operating in violation of state-bound conservation and control measures of applicable international law or violates national law or international liability, especially the liability made to the fishery management organizations in the relevant regions of the participating countries.
2. Unreported fisheries is violated national laws or regulations, are not reported or misreported, have been conducted in the area of authority of the appropriate local fishery management organization, and have not been reported to the relevant national authorities about its fishing activity.
3. Unregulated fishing refers to fishing activities that are not regulated, such as fishery activities carried out in water areas or for fish stocks where there are no applicable conservation and management arrangements.

There is no specific term for IUU fishing under the national rule. The obligation to seek a fishing permit is regulated by statutory regulations known as *Surat Izin Usaha Perikanan/SIUP*, *Surat Izin Penangkapan Ikan/SIPI*, and *Surat Izin Kapal Pengangkut Ikan/SIKPI*.

The provisions are contained in Article 1 points (16), (17), and (18) jo Article 27 Paragraph (1) and Article 28A of Law No. 45 of 2009 concerning fisheries. The law regulates the requirement to request for fishing permit of a particular category for the above five Gross Tons (GT). While no license is necessary for fishing activities conducted by a small-scale fisherman to meet daily needs and use boats without motor, external motor, or small-sized boats less than 5 GT.

The provision regulating this permit is the decision of MMAF No. 8/PERMEN-KP/2020 concerning the delegation of the authority issuing business licenses in the marine and fisheries sector to the head of the investment coordination agency. Therefore, fishing without a permit for those required shall mean illegal fishing.

---

<sup>21</sup> IPOA-IUU, adopted by consensus at the 24th Session of the FAO Committee on Fisheries (COFI) on 2 March 2001 and endorsed by the 120th Session of the FAO Council on 23 June 2001, Appendix 1, 109 –110 accessed by

## **2) Criminal Sanction of IUU Fishing in Indonesia**

Criminal sanctions of IUU fishing by foreign vessels under Law No. 45 of 2009 Amendments to Law No. 31 of 2004 include the fines/financial penalties, confiscation of fishing gear, catch, and vessels used, and imprisonment of the vessel's crews and captains and the sinking of the vessel. Individual foreign defendants of illegal fishing in the IEEZ are not subject to criminal penalties, according to Article 102 of Law Number 45 of 2009 Amendments to Law Number 31 of 2004 Concerning Fisheries. Article 104 lays forth the requirements for a detained individual and their crew to be freed immediately by international standards after paying a reasonable bond. The tactic of sinking foreign vessels is still a popular method of law enforcement, and Indonesia looks to be employing it to prevent illegal fishing.

The sinking of an illegally fishing foreign vessel has its own set of Standard Operating Procedures (SOP), which include:

1. Securing the crew;
2. Inventory of the equipment on the vessel, as well as emptying the vessel of fuel;
3. Documentation;
4. Setting aside (part of) the illegal catch for evidentiary purposes; and
5. Prepare and enclose minutes (Berita Acara).

The foreign vessels sinking policy is an alternative prosecution to the eradication of IUU fishing by Law No. 45 of 2009, Amendments to Law No. 31 of 2004 on Fisheries. The fisheries control vessels can stop, inspect, transport, and detain vessels suspected or reasonably suspected of committing violations in Indonesia's fishery management area for further processing to the nearest port. According to Article 69 (4), fisheries investigators and/or supervisors, in the performance of the duties referred to in paragraph (1), take special measures in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence.

Under existing national fisheries legislation, the penalties levied on individuals who engage in illegal fishing are very severe. Each fishing vessel, for example, must obtain authorization or a license to engage in fishing activities. Operators and owners of vessels flying the Indonesian flag who violate the limitations face a six-year sentence or fines of IDR 2 billion. If the offenses are committed by a foreign-flagged vessel, the operator and owner of the vessel might face a six-year term or a fine of IDR. 20 billion.

The MMAF governs national fisheries through licensing, empowerment, monitoring, and oversight. The MMAF shares control over those four operations with the provincial and district/city

---

[www.fao.org/DOCREP/003/y1224E/Y1224E00.HTM](http://www.fao.org/DOCREP/003/y1224E/Y1224E00.HTM) (09 July 2021)

administrations at the regional level. Indonesia already has a special court for fisheries in ten towns to prosecute those who engage in IUU fishing.<sup>22</sup>

A deterrence theory in criminal law states that legislation and punishment aim to prevent individuals from committing crimes. The fear of being punished for having experienced such discipline is known as specific deterrence.<sup>23</sup>

According to Gustav Radbruch, the law tries to achieve justice, benefit, and legal certainty in concert. Fairness, benefit, and legal clarity must be prioritized if it cannot be implemented in practice.<sup>24</sup> As explained by Gustav Radbruch, the essence of opinion is that justice, certainty, or benefit can exist as legal goals that exist in one legal system together and are maximized in a totality. These cannot necessarily realize these three legal objectives together. Therefore, learning the legal objectives must take a priority scale by prioritizing expediency, justice, and legal certainty.<sup>25</sup>

### **3) The Relevancies of Foreign Vessel-Sinking Policy to UNCLOS 1982 in Eradicating IUU fishing in IEEZ**

Indonesia has the right to exploit, preserve, and manage fisheries resources in the IEEZ and on the high seas under the UNCLOS 1982, which the Indonesian government recognized by Law No. 17 of 1985. In the UNCLOS 1982, Indonesia's rights over its waters and seas were divided into two broad categories: the *first*, Indonesia's sovereign waters (sovereignty), inland seas, archipelagic waters, and territorial seas.

The *second* classification is Indonesia's sovereign right over natural wealth in EEZ. These rules did not explicitly discuss law enforcement against IUU fishing actors by UNCLOS 1982. When it comes to EEZ rights, things are a bit different. The EEZ has a unique legal position known as "*sui generis*" which indicates that the IEEZ can not be compared to legal treatment in a country's sovereign territory's territorial region.

The IEEZ is part of the Indonesian jurisdiction over which Indonesia has sovereign rights. Further provisions regarding this sovereign right are implemented based on legislation and international law provisions.

---

<sup>22</sup> Kementerian Kelautan dan Perikanan, "Mahkamah Agung dan KKP Buka Pendaftaran Calon Hakim Ad Hoc Pengadilan Perikanan (The Supreme Court and MMAF opens recruitment for ad hoc judges for fisheries court)", KKP News, 1 May 2019, accessed by <https://kkp.go.id/artikel/10339-mahkamah-agung-dan-kkp-buka-pendaftaran-calon-hakim-ad-hoc-pengadilan-perikanan>. (20 December 2021)

<sup>23</sup> Raka Momon Saputra & Adrianus Eliasta Meliala, "Perspektif Penjeratan Dalam Rangka Kebijakan Kriminal Peneggelaman Kapal Pencuri Ikan", Jurnal Kriminologi Indonesia, 2007, P. 7.

<sup>24</sup> Guntur Dirga Saputra. "Eksekusi Pembakaran/Peneggelaman Kapal Tindak Pidana Illegal Fishing Berbendera Asing Dalam Perspektif Sistem Peradilan Pidana". Jurnal Magister Hukum Udayana: Vol. 9 No. 4, 2020, p. 757.

<sup>25</sup> *Ibid.*



UNCLOS 1982 states that, based on Article 56, the coastal state has the sovereign right to explore, exploit, conserve and manage the marine resources of its EEZ with due regard to the rights and obligations of other States. It acts in a manner consistent with the provisions of this Agreement.

In addition, Article 61 (1) of UNCLOS 1982 states the coastal state shall determine the allowable catch of the living resources in its exclusive economic zone. A coastal state can enforce its laws if it breaches its rules governing the exploration, exploitation, protection, and management of fishing resources. Coastal state law enforcement in the EEZ is outlined in UNCLOS 1982 article 73, which states:

1. The coastal state may exercise its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone by taking extraordinary measures such as boarding, inspection, arrest, and judicial proceedings to ensure compliance with the regulations adopted by this convention.
2. Upon posting a reasonable bond or security, arrested vessels and their crews shall be promptly released.
3. Coastal state penalties for violations of fisheries laws and regulations in the EEZ 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.

The coastal state is responsible for enforcing the EEZ. If a foreign vessel violates a coastal state's fishing rules in the EEZ, the coastal state can board, inspect, arrest, and punish the vessel and notify the flag state. Article 73 of UNCLOS 1982 also discusses whether or not it is permissible to use the policy of sinking ships for IUU fishing. However, let's look at all paragraphs 1 to 4. The flag state has the right to receive notification regarding the treatment of its fishing vessels inspected, caught, and legally processed by Indonesia as a coastal state in the IEEZ.

Although vessel burning or sinking is not included in Article 73 (1) of the UNCLOS 1982, Indonesia is not the only country that employs this method to prevent and deter illegal fishing at sea. Even though the lack of a universally accepted norm, Malaysia<sup>26</sup>, France<sup>27</sup>, Australia<sup>28</sup>, and the United States<sup>29</sup> are also among the countries that have implemented vessel sinking or destruction as part of their enforcement actions, especially for fishing offenses in the EEZ.

---

<sup>26</sup> Nadirah and H. Rodzi, "Malaysia Turns Up the Heat, Sets Foreign Boat Ablaze for Illegal Fishing" The Straits Times, accessed by online: The Straits Times. <https://www.straitstimes.com/asia/se-asia/malaysia-turns-up-the-heat-sets-foreign-boats-ablaze-for-illegal-fishing> (1 January 2022)

<sup>27</sup> M/V Virginia G, "(Panama v. Guinea-Bissau), Case No. 19, Judgment of April 14, 2014", Dissenting Opinion Judge Ndiaye: ITLOS Journal Vol. 14, 2014, p. 205.

<sup>28</sup> Brian Wilson, "Human Rights and Maritime Law Enforcement", Stanford Journal of International Law Vol. 52, 2016, p. 243.

<sup>29</sup> *Ibid.*

Australia has previously punished criminals by sinking unregistered and unlicensed fishing vessels. Only vessels with valid shipping and fishing licenses are capturing fish lawfully. Furthermore, bilateral agreements between the two nations are required in the territorial sea. This policy in Australia is called Sovereign Border, which Tony Abbot launched when he was elected Prime Minister of Australia in 2013.<sup>30</sup>

The eradication of IUU fishing activities is being carried out to achieve the national development mission outlined in Law Number 17 of 2007 relating to the National Long-Term Development Plan 2005-2025, namely, to make Indonesia an independent and advanced country based on national interests. It became the basis for the MMAF to protect Indonesian fishery resources and eradicate IUU fishing.

The state is responsible for safeguarding the national interest since it involves the community's interests in achieving social welfare for all Indonesians. The act of foreign fishing vessels catching fish without a permit in the FMA-RI violates the law because it violates the jurisdiction of the IEEZ. It means that the act of foreign fishing vessels entering the jurisdiction of the IEEZ without license and notification for such commercial activities violates criminal jurisdiction because it is a criminal act of illegal fishing.

Indonesia's patrol vessels are authorized by Article 69 (4) of Law Number 45 of 2009 Amendments to Law Number 31 of 2004 Concerning Fisheries gives them the authority to take "extraordinary actions" such as sinking foreign fishing vessels if "adequate preparatory proof" is presented. Any preliminary evidence to suspect a foreign vessel committing a fisheries offense, such as a vessel caught red-handed fishing or carrying fish in Indonesia's fisheries zone without the requisite licenses, is "adequate preliminary evidence."<sup>31</sup> According to the article, adequate preliminary evidence is acquired when the investigator considers a strong enough indication of criminal conduct that a specific foreign vessel is fishing without valid permission.<sup>32</sup>

The first command for the "special measures" was "*deliberate*" and "*direct*" destruction of vessels at sea based on safety concerns, according to the MMAF Directive. It lays forth both subjective and objective criteria for putting such harsh measures. It is capable of meeting the following subjective requirements:

---

<sup>30</sup> Muhammad Syahrianto, "Apa Alasan Australia Sebenarnya di Balik Pembakaran Kapal Nelayan Indonesia", 21 Agustus 2013, accessed by <https://wartaekonomi.co.id/read373647/apa-alasan-australia-sebenarnya-di-balik-pembakaran-kapal-nelayan-indonesia?page=2> (08 December 2021)

<sup>31</sup> Dita Liliansa, "The Necessity of Indonesia's Measures to Sink Vessels for IUU Fishing in the Exclusive Economic Zone", Asian Journal of International Law, 2019, p. 24.

<sup>32</sup> Kaizar Nararya and Emilio Bintang Risanda. "Sink That Vessel!: Reflecting Indonesia Sinking Vessel Policy In Light of *Unclos*". Juris Gentium Law Review: Vol. 5 No. 2. 2017. P. 26.

1. if a vessel's captain or crew resist or engage in maneuvers that could endanger a patrol vessel;
2. if weather conditions make it impossible to bring the vessel to port; or
3. if the foreign vessel is so severely damaged, it could endanger the lives of the accused and the patrol vessel.

On the other hand, the objective requirements consist of cumulative and/or alternative requirements. The cumulative conditions are met if a vessel:<sup>33</sup>

1. has no valid permit,
2. manifestly carries out illegal fishing or illegal transporting of fish in Indonesia's fisheries management zone, and
3. it is a foreign vessel with all foreign nationals' crew.<sup>34</sup>

According to the MMAF Investigator, the Director-General of Surveillance for Marine and Fisheries Resources can fire or sink a foreign vessel. The MMAF patrol vessel must produce a verbal or written report.<sup>35</sup> After getting authorization, the patrol vessel must tell the fishing vessel's crew before destroying the fishing vessel.<sup>36</sup>

The foreign vessels sinking policy is not contrary to UNCLOS 1982 because the only human being is the subject of Article 73 paragraph (3). The human being can be fined or deported without being sentenced to confinement, while the vessels can be confiscated. The law enforcement foreign vessels sinking policy by national regulation applies legal procedures. It is not arbitrary law enforcement.

According to Article 4 (1) of Act No. 5 of 1983 on IEEZ, the sovereign rights alluded to by the UNCLOS 1982 are not the same as or cannot be equated with Indonesia's total sovereignty over its territorial sea, archipelagic water, and inland waterways. The Indonesian judges chose to impose only fines or vessel sinking without imposing alternative confinement. Article 73 (2) of the UNCLOS 1982 requires the coastal state to release the imprisoned crew as soon as possible after collecting an adequate security deposit or other types of security. In contrast, Article 292 specifies the procedure for immediate release. Security deposits or further financial assurances must be "reasonable", according to Article 292 paragraph 1.

The foreign vessels sinking policy has a positive impact and becomes a therapeutic shock so that foreign fishers do not arbitrarily steal fish in Indonesian waters. In addition, it would be better if the captured vessels were auctioned. Implementing a foreign vessel sinking policy carries out the

---

<sup>33</sup> Regulation of the Director General of Surveillance for Marine and Fisheries Resources No. 11/Per-DJSDKP/2014 on The Technical Guidance in Enforcing Special Measure to Foreign Fishing Vessel, Article. 8 (1).

<sup>34</sup> *Ibid.*, Article 8 (2).

<sup>35</sup> *Ibid.*, Article 9 (2).

<sup>36</sup> *Ibid.*, Article 10.

crime of IUU fishing by Indonesia's government is part of national law enforcement policy destroying evidence. It passed by a national legal basis through the provisions of Article 69 of Law Number 45 of 2009 Amendments to Law Number 31 of 2004 concerning Fisheries paragraph (1) and paragraph (4) and a mechanism of Article 76A and paragraph (4) jo. Article 38 jo. Article 45 of Law Number 8 of 1981 regarding Indonesian Criminal Procedure Code/KUHAP.<sup>37</sup>

The foreign vessel sinking to eradicate IUU fishing in IEEZ will essentially give deterrent effect. It can be concluded launched the foreign vessel sinking policy adopted by Indonesia's government commits to eradicating IUU fishing activity to protect IEEZ.

#### **4) The Effectiveness of Foreign Vessels Sinking Policy in Eradicating IUU Fishing in IEEZ**

The provision of criminal sanctions is an essential instrument in enforcing criminal law to represent the values of a norm in regulating people's lives. Criminal law cannot be placed as the main instrument (*primum remedium*) in regulating society but as the final instrument (*ultimum remedium*). Therefore, criminal law is not a must in tackling crime. According to H.G De Bunt, criminal law can become the main instrument (*primum remedium*) if it causes huge victims and losses. However, in its development, criminal law is used as a *primum remedium*. It can be seen from most laws that prioritize criminal sanctions as a means of law enforcement, one of which is Law No. 45 of 2009 amending Law No. 31 of 2004 concerning fisheries.

As a result, the Indonesian government must develop a foreign vessel sinking plan to enforce foreign vessel violations against Indonesia's sovereign right, significantly to eradicate IUU fishing in the IEEZ. It must be carried out as a sincere effort to combat the IUU fishery.

The restoration of Indonesia's national fish stocks to sustainable levels is one of the country's national goals. It is especially true in light of the present administration's foreign policy and "Nawacita"<sup>38</sup> action plans developed during the election campaign. Many Indonesians, predictably, expect the government to deliver on its promises.<sup>39</sup>

Considering Indonesia's economic structure, Indonesia is still synonymous with the characteristics of developing countries. Indonesia's Gross Domestic Product (GDP) per capita reaches USD 3,570, compared to Singapore, considered the most progressed country in Southeast Asia with a GDP of 52,960 USD per year. The sea is one of the most intriguing locations to investigate compared to current natural resources such as petroleum, agricultural goods, forest

---

<sup>37</sup> Indonesian Criminal Procedure Code/KUHAP determines the procedures and rights of individuals at different stages of the trial process.

<sup>38</sup> Nawacita is 9 (nine) priority agendas by President Joko Widodo's government programs.

products, and other earth resources. Due to its geographic location, Indonesia is surrounded by abundant seas, natural resources, and fisheries.

From these territorial waters, the Gross Value of Fisheries Output (GVFO) in Indonesia in 2004 was USD 5.468 million. The majority of these figures represent the contribution of the capture fish sector which reached USD 3,130 million (FAO, 2006). Indonesia can boost the country's income figure from the above value. It can only be done if Indonesia eradicates IUU fishing from its waters.

Some law enforcement institutions involved are the MMAF, Indonesian Navy, Indonesia Marine Police, Maritime Security Agency/BAKAMLA, and Attorney General Office of the Republic of Indonesia. From law enforcement's political point of view, the burning and sinking of foreign-flagged ships is more a manifestation of firmness and a firm willingness to fight for the national interest to create public welfare.

Such firm rules and measures appear to provide deterrent effects to foreign nationals while restoring Indonesia's honor and dignity over its IEEZ. Indonesia has the legal authority to preserve its sovereign right against illegal fishing in the Indonesian seas. Thus, in principle, the foreign vessels' sinking policy is implemented the state sovereign right to law enforcement that is not contrary to UNCLOS 1982. Illegal fishing poses a severe economic danger to Indonesia's sovereignty and sovereign right and is a significant obstacle to the country's ambition to become the world's maritime country. The Indonesian government's oppressive actions are also a sign of Indonesia's ability to exercise national security.

Ex-Minister of Maritime Affairs and Fisheries Susi Pudjiastuti highlighted in a news release that the foreign vessel auctioning strategy is a gap for IUU fishing players to purchase back their vessels and return to IUU fishing in the FMA-RI and IEEZ. As a result, Indonesia's foreign vessel auctioning strategy is counterproductive, and often repurposed for similar offenses. As a result, the foreign vessel sinking policy is being applied more effectively to prevent foreign fishing vessels from engaging in IUU fishing.

The NTSR from purchasing foreign vessels via judicial auction is only IDR. 100, 200, up to 500 million. Meanwhile, vessels with more than 200 GT going to sea can catch more than 100 tons of fish, whose profits are estimated to reach IDR. 1 billion to Rp. 2 billion. They are still profitable compared to PNBP from purchasing foreign vessels via judicial auction. Therefore, they are still profitable, and we have caught a lot of "*recidivism*" vessels. The deterrent effect is non-existent if

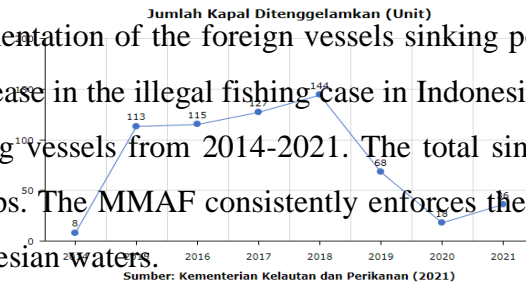
---

<sup>39</sup> Marcus Mietzner, "*Reinventing Asian Populism: Jokowi's Rise, Democracy, and Political Contestation in Indonesia*",

using foreign vessels auction policy via judicial for foreign. (Ex-Special Staff Coordinator of Task Force 115 by Mas Achmad Santosa, 2019)

In the legal considerations of the Medan district court judge, there is a concern that the vessel will be taken back by the previous owner. In 2019, the Banda Aceh District Court handled the IUU fishing case. It turned out that the foreign vessel case was arrested the same vessel as the result of the 2017 Medan District Court decision used again for IUU fishing by Malaysian fishermen. The following is data on vessels sinking that has been carried out in Indonesia:

During the implementation of the foreign vessels sinking policy for illegal fishing cases, the data above shows a decrease in the illegal fishing case in Indonesia, with a significant decline in the sinking of foreign fishing vessels from 2014-2021. The total sinking of ships from 2014 to 2021 was recorded as 629 ships. The MMAF consistently enforces the law against ships indicated to be fishing illegally in Indonesian waters.



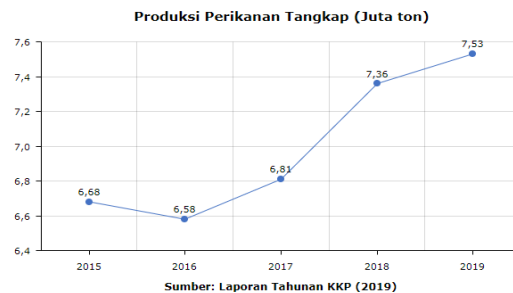
Indonesia has chosen a foreign vessel sinking policy to produce a deterrence impact as an optimal punishment. Susi Pudjiastuti, the former Minister of Maritime Affairs and Fisheries, stated in her goodbye speech in October 2019 that 556 IUU fishing vessels were sunk during her term from 2014 to 2019. Based on Vessel Monitoring System (VMS) data, Automatic Identification System (AIS), and nighttime satellite imaging data, this regulation has decreased fishing activity within the IEEZ by at least 25%.

There has been a favorable trend in the number of foreign vessels sinking for illegal fishing since the policy was implemented, with the number of foreign vessels sinking for illegal fishing decreasing from 2018 to 2021. It demonstrates that illegal fishing activity has diminished. The punishment for illegal fishing actors sinking vessels has a deterrence impact.

Compliance with the terms of the current legislation by marine and fishing industry actors achieved 93.57 percent in 2019. This achievement results from implementing the functions of prevention, monitoring, supervision, and enforcement in the marine and fishery sectors. The prevention function is carried out through outreach to the community and direct involvement through Fishery Community Supervisory Groups Development Activities/POKMASWAS.

The monitoring function is carried out through various media and facilities, including Indonesia's Control Center Operation, which utilizes VMS, RadarSat, and other remote sensing systems. Meanwhile, law enforcement is carried out by investigating and handling evidence against perpetrators of violations in the marine and fisheries sector.

After implementing this policy, it drastically increased capture fisheries production from before, so this method was considered effective in overcoming the problem of illegal fishing. In essence, this graph depicts the outcomes of Indonesia's sincerity in combating illegal fishing in the country:



From this MMAF data, the sinking of these vessels impacts increasing fish catches. Capture fisheries production in 2015 was 6.68 million tons, then increased to 7.53 million tons in 2019. The data is directly proportional to the value of NTSR, which also increased. NTSR in 2015 was valued at IDR 137.1 billion, then rose significantly to IDR 756.5 billion in 2019.

If Indonesia only focuses on fine sanctions on IUU fishing agents in IEEZ, it will not be maximal. IUU fishing in the EEZ against the respondent can only pay a fine without imprisonment. Problems will arise when the judge decides on a fine without an alternative prison sentence, and the respondent can not or does not want to pay it. It gives rise to receivables for the prosecutor as the executor. The sinking of foreign vessels has a positive impact on the fisheries sector in Indonesia because illegal fishing has so far suppressed the decline in marine products in Indonesia.

The foreign sinking fishing vessels are by the authority possessed after the procedure is carried out correctly, and the substance is based on statutory regulations (Principle of Legality). It means that marine users will get legal certainty, not based on Indonesian law enforcement officials' arrogance and arbitrary actions. Thus the purpose of the law in charge of creating legal certainty can be realized so that the order of the sea user community is achieved.

Although the sinking policy intended to create a deterrence effect, the Indonesian government must also look to the diplomatic norms to avoid misunderstandings from parties outside Indonesia. The strategy of sinking foreign vessels does not impact Indonesia's bilateral, regional, and multilateral ties with other countries. According to Hikmahanto Juwana, an international law

professor at Indonesia University, there are five reasons why this approach should be maintained and would not impair bilateral relations:

1. No country in the world justifies the actions of its citizens who commit crimes in other countries. Foreign ships that are sunk are not licensed to catch fish in Indonesian territory, so it is a criminal act.
2. The act of drowning is carried out in Indonesia's sovereignty and sovereign rights (Indonesian Exclusive Economic Zone).
3. The act of drowning is carried out based on a valid legal provision, namely Article 69 paragraph (4) of the Indonesian Fisheries Law.
4. Other countries must understand that these criminal acts harmed Indonesia. If it continues, the losses experienced will be even more significant.
5. The sinking process has taken into account the crew's safety.

However, Hikmahanto Juwana said that before enforcing the foreign vessel sinking policy, Indonesia's government could notify foreign ambassadors and representatives to convey to their governments, particularly in countries where fishing vessels frequently enter Indonesian territory illegally, such as Thailand and the Philippines, Malaysia, China, and Taiwan. It is hoped that the government can coordinate optimally with representatives of countries whose fishing boats have been sunk. Thus, good relations between countries are expected to be maintained.

## CONCLUSION

Implementing a foreign vessel sinking policy as an option punishment to law enforcement in IEEZ is not contrary to UNCLOS 1982. The national policy of foreign vessels sinking is the subject protected in the EEZ by Article 73 (3) is the human being, not the vessel. The strategy of sinking foreign vessels remains an effective tool for Indonesian law enforcement to limit the practice of illegal fishing by foreign vessels in Indonesian seas, particularly in the EEZ, and serve as a deterrence effect.

During the implementation of the foreign vessels sinking policy, the data by MMAF shows a decrease in the IUU fishing case in Indonesia, with a significant decline in the foreign vessel sinking from 2014-2021. this regulation has decreased illegal fishing activity within the IEEZ by at least 25%. It shows the movement of illegal fishing actors has decreased. T indicates that the sinking penalty for IUU fishing in the IEEZ effectively provides a deterrent effect for the perpetrators.

## BIBLIOGRAPHY

Ariatno. 2005. "Indonesia Interest In Free Marine Fisheries Management". Indonesia Journal of International Law.



- Dahuri, Rohmin. 2013. "Aspek Hukum Penanganan Tindak Pidana Perikanan". Makalah Dilkat Teknis Penanganan Tindak Pidana Perikanan Angkatan II, Pusdiklat Kejangung RI.
- Dirga Saputra, Guntur. 2020. "Eksekusi Pembakaran/Penenggelaman Kapal Tindak Pidana Illegal Fishing Berbendera Asing Dalam Perspektif Sistem Peradilan Pidana". Jurnal Magister Hukum Udayana: Vol. 9 No. 4.
- G. A. Wagey, S. Nurhakim, V.P.H. Nikijuluw, Badrudin, and Tj. Pitcher. "A Study of Illegal, Unreported and Unregulated (IUU) Fishing in the Arafura Sea, Indonesia". Ministry of Marine Affairs and Fisheries: Research Center for Capture Fisheries. 2009. P. 4.
- G., M/V Virginia. 2014 "(Panama v. Guinea-Bissau), Case No. 19, Judgment of April 14, 2014", Dissenting Opinion Judge Ndiaye: ITLOS Journal Vol. 14.
- IPOA-IUU, adopted by consensus at the 24th Session of the FAO Committee on Fisheries (COFI) on 2 March 2001 and endorsed by the 120th Session of the FAO Council on 23 June 2001, Appendix 1, 109 –110 ([www.fao.org/DOCREP/003/y1224E/Y1224E00.HTM](http://www.fao.org/DOCREP/003/y1224E/Y1224E00.HTM)).
- Kementerian Kelautan dan Perikanan, "Mahkamah Agung dan KKP Buka Pendaftaran Calon Hakim Ad Hoc Pengadilan Perikanan (The Supreme Court and MMAF opens recruitment for ad hoc judges for fisheries court)", KKP News, 1 May 2019, accessed by <https://kkp.go.id/artikel/10339-mahkamah-agung-dan-kkp-buka-pendaftaran-calon-hakim-ad-hoc-pengadilan-perikanan>. (20 December 2021)
- KKP News, "Kerugian Negara Akibat Illegal Fishing, 101 Triliun Rupiah!", Accessed by <https://news.kkp.go.id/index.php/kerugian-negara-akibat-illegal-fishing-101-triliun-rupiah/> (01 Desember 2021)
- Liliansa, Dita. 2019. "The Necessity of Indonesia's Measures to Sink Vessels for IUU Fishing in the Exclusive Economic Zone", Asian Journal of International Law.
- Maryani, H. & Nasution, A. 2019. "Rekonsepsi Model Pemberantasan Illegal Fishing di Perairan Indonesia (Analisis Perspektif Hukum Internasional)". Jurnal Legislasi Indonesia: Vol. 16 No. 3.
- Mietzner, Marcus. 2015. "Reinventing Asian Populism: Jokowi's Rise, Democracy, and Political Contestation in Indonesia", JSTOR Journal: No. 72.
- Ministry of Marine Affairs And Fisheries. "National Plan Of Action (NPOA) To Prevent and to Combat Illegal, Unreported, and Unregulated Fishing 2012-2016". Based The Minister of Marine Affairs and Fisheries of Republic Indonesia Decree Number KEP. 50/MEN/2012. P. 5. (<http://extwprlegs1.fao.org/docs/pdf/ins165159.pdf>)
- Muhammad Syahrianto, "Apa Alasan Australia Sebenarnya di Balik Pembakaran Kapal Nelayan Indonesia", 21 Agustus 2013, accessed by <https://wartaekonomi.co.id/read373647/apa-alasan-australia-sebenarnya-di-balik-pembakaran-kapal-nelayan-indonesia?page=2> (08 December 2021)

- MY Aiyub Kadir, (2022) 'Application of the Law of Self-determination in a Postcolonial Context: A Guideline' in Lee, E.Y.J. (eds) ASEAN International Law. Springer, Singapore.  
[https://doi.org/10.1007/978-981-16-3195-5\\_5](https://doi.org/10.1007/978-981-16-3195-5_5)
- Nadirah and H. Rodzi, "Malaysia Turns Up the Heat, Sets Foreign Boat Ablaze for Illegal Fishing" The Straits Times, accessed by online: The Straits Times.  
<https://www.straitstimes.com/asia/se-asia/malaysia-turns-up-the-heat-sets-foreign-boats-ablaze-for-illegal-fishing> (1 January 2022)
- Nararya, Kaizar. and Emilio Bintang Risanda. 2017. "Sink That Vessel! : Reflecting Indonesia Sinking Vessel Policy In Light of Unclos". Juris Gentium Law Review: Vol. 5 No. 2.
- Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Prenada Media, 2005, P. 3.
- Rachel Baird. "Transnational Security Issues in The Asean Maritime Environment: Fisheries and Piracy". Paper delivered to Sino-Australian Joint research Program, Collaboration and Governance in The Asia Pacific, 2010.
- Rosello, Mercedes. 2016. "Illegal, Unreported and Unregulated Fishing Control in the Exclusive Economic Zone: a Brief Appraisal of Regulatory Deficits and Accountability Strategies". CIRR Journal: Vol. 22 No. 75.
- Saputra, Raka Momon & Adrianus Eliasta Meliala. 2007. "Perspektif Penjeraan Dalam Rangka Kebijakan Kriminal Penenggelaman Kapal Pencuri Ikan". Jurnal Kriminologi Indonesia.
- Sularso, Aji. 2009. "Overfishing, Over Capacity Dan Illegal Fishing (studi kasus laut Arafura)". Jakarta, Kementerian Kelautan dan Perikanan.
- Susanto, Joko. and Ali Masyhar. 2019. "Law Enforcement on Fisheries Crime After the Enactment of Law Number 45 of 2009: A Normative Analysis". Journal of Law and Legal Reform: Vol. 1 No. 1.
- Swan, Judith. 2019. "IUU Fishing and Measures to Improve Enforcement and Compliance". International Ocean Institute Canada, Leiden: Brill.
- Widjaja, Sjarief. Tony Long and Hassan Wirajuda. 2020. "Illegal, Unreported and Unregulated Fishing and Associated Drivers". HLP World Resource Institute: Blue Paper.
- Wilson, Brian. 2016. "Human Rights and Maritime Law Enforcement", Stanford Journal of International Law Vol. 52.