

State Sovereignty Law Politics in Handling Illegal Fishing Crime in Indonesia (Case Study of Natuna Islands Sea Territory)



Saefudin Zuhri¹, Agus Surono²

^{1,2} Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta Jl. R.S. Fatmawati N.01 South Jakarta 12450

ABSTRACT: Indonesia is the largest archipelagic nation in the world which shares border countries with many countries. Indonesia has serious problem concerning maritime security in their territorial waters, such as Illegal, Unreported, and Unregulated Fishing (IUU). The IUU activities done by foreign-flagged fishing vessels and bringing their catch abroad is very detrimental to state finances, namely the loss of potential income for local and central government. The Natuna Islands are one of the Indonesia's outermost border islands that are rich in marine fish resources. This research aims to analyze the effectiveness of foreign-flagged fishing vessels burning or sinking policies based on Article 69 of Law No. 45 of 2009 that were implemented in Natuna Sea territory. The research method used in this study is normative juridical method using literature and online data search.

KEY WORDS: Natuna Sea, IUU Fishing, foreign-flagged fishing vessels burning/sinking

1. INTRODUCTION

A. Background

Indonesia is the largest archipelagic country in the world and shares direct borders with many nations. Indonesia faces significant security threats in its maritime territory, including the involvement of various foreign parties in cases of Illegal, Unreported, and Unregulated (IUU) fishing in Indonesian waters. Due to its geographical location surrounded by other countries, Indonesia needs to coordinate with numerous agencies to address IUU fishing in various regions of the country. As a maritime-rich nation, Indonesia boasts abundant marine resources, with approximately 50% of the world's fish species and 75% of the world's coral reef species found in Indonesian waters³. Its fertile island clusters and strategic location, situated between two continents, Asia and Australia, and bordered by two oceans, the Indian Ocean to the west and the Pacific Ocean to the east, contribute to Indonesia's wealth of marine resources. The fisheries resources of Indonesia are highly sought after by many countries worldwide, with Indonesian fisheries products currently ranking among the top five globally, trailing behind Canada, China, Chile, and Thailand.⁴

As a nation, Indonesia holds sovereignty over its national territory, both on land, in the air, and in waters. This sovereignty encompasses the entire land or island territory, island waters, and the airspace above, including all the resources contained within. In the exclusive economic zone, coastal states have sovereign rights to explore and exploit the natural resources within their waters. One of Indonesia's immensely valuable natural resources in its seas is fisheries. As an archipelagic state with a total area of 5,193,253 square kilometers, comprising 1,890,754 square kilometers of land and 3,302,498 square kilometers of ocean, Indonesia is prone to illegal fishing activities by foreign vessels.

The surge in illegal fishing in Indonesia over the past five years has led to numerous issues in the maritime and fisheries sectors. Besides undermining national sovereignty, it also causes financial losses to the state.

Indonesia's Exclusive Economic Zone (EEZ) is an area outside and adjacent to Indonesian waters, as defined by the applicable laws governing Indonesian waters, encompassing the seabed, subsoil, and superjacent waters, extending up to 200

1 Master of Law program student Faculty of Law, Universitas Pembangunan Nasional Veteran Jakarta Jl. R.S. Fatmawati N.01 South Jakarta 12450 The author can be contacted via email elzuhry35@gmail.com.

2 Permanent Lecturer at the Faculty of Law, Al-Azhar University Indonesia, Jl. Al Azhar Grand Mosque Complex, Jl. Sisingamangaraja, Kebayoran Baru, Selong, RT.2/RW.1, Selong, Kebayoran Baru, South Jakarta, DKI Jakarta 12110. Obtained his doctoral degree from the Faculty of Law, University of Padjadjaran. The author can be contacted via email surono_uai@yahoo.com.

3 Efri Yoni Baikoeni, Patriot Negara Kepulauan (Jakarta: Pandu Aksara. 2014) Page 67.

4 E.H Allagan, Kepala Pusat Penyiapan Kebijakan Keamanan Laut, Bakorkamla, Jakarta, Tabloid Diplomasi No.10 Page 8.

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nautical miles from the baselines of Indonesian territorial waters. Through the EEZ, the government has sovereign rights to regulate foreign vessels engaged in illegal fishing within Indonesian waters according to its policies.

Illegal, Unreported, and Unregulated (IUU) fishing, which refers to fishing activities that violate laws, are not reported, or are unregulated, poses a threat to the management of marine and fisheries resources worldwide

IUU fishing is categorized as one of the seven maritime crimes in the world, including armed piracy and robbery, terrorism, arms smuggling, narcotics, human trafficking through the sea, and marine environmental destruction (United Nations, 2008).

According to the Food and Agriculture Organization (2001), IUU fishing consists of three components: illegal (I) fishing, unregulated (U) fishing, and unreported (U) fishing, each with different definitions and meanings.

Illegal fishing is defined as the act of capturing fish by foreign individuals or vessels in the jurisdictional waters of a country without permission from that country, or in violation of applicable laws and regulations, contrary to national regulations and/or international obligations. It is conducted by vessels flying the flag of a country that is a member of a regional fisheries management organization but operates contrary to the conservation and management measures implemented by that organization or international legal provisions.

Unreported fishing refers to the act of catching fish without reporting or inaccurately reporting the catch to the relevant authorities, in violation of national laws and within the competence of Regional Fisheries Management Organizations (RFMOs), but not reported or reported inaccurately, contrary to the reporting procedures established by those RFMOs.

Unregulated fishing involves the capture of fish in an area or fish stock where conservation and management measures have not been applied, and such fishing activities are conducted in a manner that is inconsistent with the state's responsibility for the conservation and management of fishery resources under international law and within the jurisdiction of RFMOs. It is carried out by stateless vessels or vessels flying the flag of a country that is not a member of RFMOs, in a manner that is inconsistent or contrary to the conservation and management measures of those RFMOs.

The enforcement of criminal law to combat fisheries offenses is part of criminal policy derived from the term "policy" (English) or "politiek" (Dutch). In foreign literature, the term "criminal politics" is often known by various terms, including penal policy, criminal law policy, or strafrechtspolitik

The understanding of criminal policy or law enforcement policy can be seen from legal policy and criminal policy. According to Sudarto (1981:159), legal policy is: (a) Efforts to establish good regulations in accordance with the conditions and situations at a certain time; (b) Policies of the state through authorized bodies to establish desired regulations that are estimated to be used to express what is contained in society and to achieve what is aspired.

Based on this understanding, Sudarto (1983:20) further states that implementing criminal policy means making choices to achieve the best criminal legislation. Efforts and policies to create criminal laws, which are essentially good, cannot be separated from the goal of crime prevention. Therefore, legal policy or criminal law policy is also part of criminal policy. In other words, from the perspective of criminal policy, criminal law policy is synonymous with the understanding of crime prevention policy through criminal law. Crime prevention through criminal law is essentially part of law enforcement efforts. Therefore, it is often said that criminal law policy is also part of law enforcement policy.

Quoted from the United Nations Convention on the Law of the Sea (UNCLOS) 1982, which is the international legal basis for the sea that has been agreed upon by more than 150 countries, accepted by all UN members, and ratified by many countries, it is stated that coastal states have sovereign rights and special jurisdiction over the utilization of natural resources in the Exclusive Economic Zone (EEZ). The width of the EEZ for each coastal state is not more than 200 nautical miles, as stated in Article 57 of UNCLOS 1982.

As a country that has ratified UNCLOS, Indonesia has the authority and sovereignty to enforce laws related to domestic interests in waters bordering other countries. In enforcing these laws, Indonesia must align national laws with international laws. According to Article 73(4) of UNCLOS 1982, when a foreign vessel is captured or detained, the coastal state must immediately inform the flag state officially, through appropriate channels, about the actions taken and the penalties imposed. As regulated in UNCLOS, the sovereignty of a coastal state or a certain maritime territory is measured based on the distance from the baseline of the outermost islands, not based on other provisions, including historical background. In implementing sovereign rights in the EEZ, a coastal state can take various actions such as boarding, inspection, detention, and legal prosecution necessary to ensure compliance with the regulations issued by the coastal state. In Indonesia, UNCLOS is used as a reference in the formation of Law No. 45 of 2009 on Fisheries. Article 69(4) states: "...investigators and/or fisheries supervisors may take special measures such as burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence." Based on this article, if it is proven that foreign fishing vessels engage in illegal fishing in Indonesian waters, Indonesia as a coastal state has the right to preserve and protect its coastal marine resources. Indonesia can take legal action by sinking the vessel.⁵

5 Apa Dasar Hukum Penenggelaman Kapal Asing Pelaku Illegal Fishing di Indonesia | kumparan.com accessed on Sunday, 16 Januari 2023, 15.30 pm.

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Efforts to combat crime through the creation of criminal laws are essentially an integral part of community protection (social welfare), so it is reasonable for criminal law policies or politics to be an integral part of social policies. Criminal policy in the prevention and control of crime is one policy among other development policies (social policy). Barda Nawawi Arief (2002:27) stated, "Efforts to combat crime need to be pursued through a policy approach, in the sense that there is integration between criminal policy and social policy; there is integration between crime prevention efforts and penal and non-penal measures". Social policy can be understood as all rational efforts to achieve community welfare while also encompassing community protection. Thus, within the definition of "social policy," it also includes "social welfare policy" and "social defense policy." Efforts to combat crime can generally be divided into two approaches: the "penal" route (criminal law) and the "non-penal" route (outside criminal law). Crime control through "penal" means focuses more on the "repressive" nature (suppression/elimination/suppression) after the crime has occurred, while the "non-penal" route emphasizes the "preventive" nature (prevention/deterrence/control) before the crime occurs. This is stated as a rough distinction because repressive actions can also be seen as preventive actions in a broader sense. Based on the above description, it can be said that criminal law policy utilizes penal and non-penal means. The use of penal means in criminal policy entails a criminal law system consisting of: (a) criminal law regulations and their sanctions; (b) a criminal law procedure; and (c) a criminal law enforcement mechanism, while non-penal means refer to the use of measures outside criminal law to combat crime.

Criminal law should not be used as the first step in efforts to resolve conflicts over natural resources or the environment. The first step that must be taken in resolving conflicts is humanization or administration efforts. So the administrative stages must be taken first in resolving the conflict. While criminal law sanctions are the "last drug" (ultimum remedium) from a series of stages of enforcing a rule of law.⁶

In Indonesia, there are several ways to address the issue of IUU fishing, including vessel sinking and destruction, which are regulated in Law Number 45 of 2009 Amendment to Law Number 31 of 2004 on Fisheries. The sinking and destruction of dozens of foreign vessels carried out by the Indonesian Government, in this case the Ministry of Maritime Affairs and Fisheries (KKP), without going through a trial, is indeed within the state's authority based on Article 69 Paragraph (4) of Law Number 45 of 2009 Amendment to Law Number 31 of 2004 on Fisheries, which states, "In implementing the functions as intended in paragraph (1), investigators and/or fisheries supervisors can take special measures in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence."

In general, IUU fishing can have negative impacts on the sustainability of the fishing industry, including;

- 1) lack of management policies,
- 2) loss of profits from fisheries, and
- 3) overfishing, leading to low profits, depletion of fish populations, potential failure of commercial fishing enterprises, loss of fish species, and threats to food security.

B. Methodology

Research method is a general approach towards a selected phenomenon that the researcher investigates. This means that research method is a type of logic that guides the research. The understanding of research method aligns with the nature of research as a discovery of information through specific procedures or standard procedures. Based on the above description, the research method chosen and used in this study encompasses the type of research, research materials, research tools, research process, and data analysis. Legal research, as part of research in general, can be distinguished based on data sources, nature, and forms. Within this framework, when legal research is viewed from its data sources, it can be divided into normative legal research and empirical legal research. Normative legal research prioritizes the use of secondary data, while empirical legal research emphasizes the use of primary data. When legal research is viewed from its nature, it can be categorized as exploratory research, descriptive research, and explanatory research. Exploratory research is conducted when knowledge about a phenomenon to be investigated is very limited or even nonexistent. Descriptive research aims to provide as detailed data as possible about humans, situations, or other phenomena. Explanatory research intends to test specific hypotheses when there is sufficient knowledge about a problem. When legal research is viewed from its form, it can be divided into diagnostic research, prescriptive research, and evaluative research. Diagnostic research is intended to obtain information about the causes of a phenomenon. Prescriptive research aims to provide recommendations on what should be done to address specific problems. Evaluative research is conducted to assess implemented programs.⁷

Based on the above differentiation of legal research, if this research is viewed from its data sources, it can be categorized as normative legal research. This is based on the consideration that this research emphasizes the use of secondary data to examine the

6 Agus Surono, "Penegakan Hukum Lingkungan Hidup Jangan Condong pada Pidanaan", <https://www.hukumonline.com/berita/a/prof-agus-surono--penegakan-hukum-lingkungan-hidup-jangan-condong-pada-pidanaan-lt5dfc4d3ca8709/> accessed on Thursday, 26 Januari 2023, 16.30 pm.

7 Apa Dasar Hukum Penenggelaman Kapal Asing Pelaku Illegal Fishing di Indonesia | kumparan.com accessed on Sunday, 16 Januari 2023, 15.30 pm.

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effectiveness of Article 69 Paragraph (4) of Law Number 45 of 2009 on Fisheries regarding the Burning and Sinking of foreign-flagged vessels. In this case, primary legal sources and secondary legal sources serve as the basic reference. In relation to normative legal research, Soerjono Soekanto and Sri Mamudji have mentioned that normative legal research or library-based legal research can include research on legal principles, research on legal systematics, and research on vertical and horizontal synchronization levels, legal comparisons, and legal history.⁸

C. Research Questions

1. What are the factors that cause repeated incidents of IUU Fishing in the Natuna Sea?
2. How does the National legal policy uphold the sovereignty of the State in addressing Fisheries crimes in Indonesia (a study on the Natuna Islands Territory)?

2. RESULTS AND DISCUSSION

A. Theoretical Framework

As a nation, Indonesia has sovereignty over its territory, both on land, in the air, and at sea within its territorial boundaries. This sovereignty covers all land or island territories, island waters, and the airspace above them, including all the resources contained within. In the exclusive economic zone, the coastal state has sovereign rights to explore and exploit the natural resources within its waters. One of Indonesia's abundant natural resources in its waters is fisheries. As an archipelagic nation with a total area of 5,193,253 km², consisting of 1,890,754 km² of land and 3,302,498 km² of ocean, there is a potential for illegal fishing by foreign vessels.

Indonesia, as an archipelagic nation with the majority of its territory consisting of water, has vast and diverse fisheries potential. The fisheries potential is an economic asset that can be utilized for the future of the nation, serving as the backbone of national development. Optimal utilization is directed towards harnessing fishery resources while considering their existing carrying capacity and sustainability to enhance the welfare of the people, improve the livelihoods of small-scale fishermen and fish farmers, increase foreign exchange earnings, provide expansion and employment opportunities, enhance productivity, value-added, and competitiveness of fishery products, as well as ensure the sustainability of fishery resources, fish farming areas, and spatial planning. This means that the utilization of fisheries resources must be balanced with their carrying capacity, aiming to provide continuous benefits. Fisheries activities are diverse, ranging from fishing, fish farming, and various related activities such as storing, cooling, or preserving fish for commercial purposes, which generate income and profits for humans. Fishing activities are carried out in open waters, meaning they are not involved in fish farming, specifically in the sea and public waters (rivers, lakes, reservoirs, swamps, etc.), using fishing gear. Fish farming involves activities such as rearing/growing fish, including breeding or spawning fish to produce seeds and harvesting the results. From fisheries activities, one of the expectations is to obtain very high business profits, but this can have unfavorable impacts on the sustainability of fishery resources and the continuity of the industry. Fishery resources, with their biological characteristics and favorable environment, do have a "self-recovery" capacity (renewable resources), although this does not mean they are unlimited. If humans exploit fishery resources recklessly and in violation of rational resource management principles, it is impossible for fisheries activities to be sustainable, and they may even come to a halt halfway due to resource depletion or damage. In this regard, it is necessary to consider how to anticipate sustainable fisheries activities and make them profitable by implementing regulations that increasingly benefit humanity. Furthermore, the wealth of fishery resources falls under the provisions of Article 33 of the 1945 Constitution, which states that the earth, water, and the natural resources contained within are owned by the State and used for the greatest benefit of the people. This provision serves as a constitutional foundation and guidance for regulating various aspects related to natural resources, particularly fisheries. Control over the utilization of fishery resources needs to be implemented to prevent conflicts of interest that negatively impact the depletion of fishery resources. Moreover, it could potentially lead to social vulnerabilities and, ultimately, socio-cultural instabilities in the affected regions.

IUU Fishing is a common terminology used to indicate international fisheries-related issues that violate regulations, both at the national and international levels. IUU Fishing is typically carried out by violating various fisheries regulations, such as fish catch quotas, destruction of marine areas, and various other legal infringements. This then becomes a problem that needs to be addressed not only at the international level but also at the national level.

The sinking and detonation of dozens of foreign vessels carried out by the Ministry of Maritime Affairs and Fisheries (KKP) without trial is indeed within the authority of the state based on Article 69 Paragraph (4) of Law Number 45 of 2009 Amendment to Law Number 31 of 2004 concerning Fisheries, which states, "In carrying out the functions referred to in paragraph (1), fisheries investigators and/or supervisors may take special measures, such as burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence."

⁸ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta ,Rajawali Press 2001), Page 14.

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The Ministry of Maritime Affairs and Fisheries (KKP) captured two foreign fishing vessels engaged in illegal fishing in the North Natuna Sea on Tuesday (August 17, 2021). The capture, which coincided with the celebration of the 76th anniversary of Indonesian Independence, reaffirms the commitment of Minister of Maritime Affairs and Fisheries Sakti Wahyu Trenggono to protect Indonesian waters from IUU Fishing practices that are not only detrimental to marine resources but also violate national sovereignty, as an effort to safeguard sovereignty, economic growth, and ecosystem sustainability.

Director General of Marine and Fisheries Resources Supervision (PSDKP), Rear Admiral TNI Adin Nurawaluddin, stated that the surveillance operation conducted by the Fisheries Supervision Vessels Hiu 11, Hiu Macan Tutul 02, and Orca 03 detected the presence of two Vietnamese-flagged vessels KG 1843 TS and KG 9138 TS engaging in fish theft within the Indonesian Republic's Fisheries Management Area (WPPNRI) 711 in the North Natuna Sea. Both vessels are suspected of operating pair trawling gear, which is highly destructive as they operate actively and have a very low selective level, resulting in the capture of all fish, both large and small. Currently, the vessels and their 22 Vietnamese crew members are in custody at the PSDKP Batam Base for further legal proceedings. With the capture of these two illegal foreign vessels, the KKP has apprehended 130 vessels in 2021, comprising 84 Indonesian fishing vessels that violated regulations and 46 foreign fishing vessels engaged in fish theft, including 15 Malaysian-flagged vessels, 6 Philippine-flagged vessels, and 25 Vietnamese-flagged vessels.⁹

B. Discussions

1) The Factors causing repeated incidents of IUU Fishing in the Natuna Sea Territory

It is due to weak legislation and criminal provisions. In 1995, the issue of illegal fishing was highlighted as a global concern by the Food and Agriculture Organization (FAO), stating that global fish stocks were declining, and one of the contributing factors was the practice of illegal fishing. The concept of illegal fishing refers to the definition issued by the International Plan of Action (IPOA) - illegal, unreported, unregulated (IUU) fishing, initiated by the FAO in the context of implementing the Code of Conduct for Responsible Fisheries (CCRF), which is explained as follows¹⁰:

- a) *activities conducted by national or foreign vessels in water under the jurisdiction of a state, without permission of that state, or in contravention of its law and regulation;*
- b) *activities conducted by vessels flying the flag of states that are parties to a relevant regional fisheries management organization (RFMO) but operate in contravention of the conservation and management measures adopted by the organization and by which states are bound, or relevant provisions of the applicable international law;*
- c) *Activities in violation of national laws or international obligations, including those undertaken by cooperating states to a relevant regional fisheries management organization (RFMO).*

The causes of Illegal Fishing are as follows¹¹.

- a) Increasing and high demand for fish (domestic/foreign);
- b) Decrease/exhaustion of fishery resources in other countries/regions;
- c) Weakness of the national fishing fleet;
- d) Multiple issuance of permits/supporting documents by different agencies;
- e) Weak supervision and law enforcement at sea;
- f) Weak prosecution and court rulings;
- g) Lack of shared vision among law enforcement agencies.

2) National Legal Policy as an Effort to Maintain State Sovereignty in Handling Illegal Fishing Crimes in Indonesia (A Case Study of Natuna Islands Sea Territory)

The term "policy" is derived from the English word "policy" or the Dutch word "politiek."¹² According to Robert R. Mayer and Ernest Greenwood, "policy" can be formulated as a decision that outlines the most effective and efficient way to achieve a collectively established goal.¹³ Policy consists of a series of concepts and principles that provide a framework and plan for carrying

9 <https://kkp.go.id/djpsdkp/artikel/33498-kkp-tangkap-dua-kapal-asing-pelaku-illegal-fishing-di-laut-natuna-utara> accessed on Saturday, 2 Juli 2022.

10 Mukhtar Api, "illegal fishing di Indonesia", in <http://mukhtarapi.blogspot.com/2011/05/illegal-fishing-di-indonesia.html>, cited from Nunung mahmudah, Op. Cit, page. 80-81

11 Article 93 Law on Fisheries

12 Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru, Ctk. Kesatu, Edisi Pertama, (Jakarta: Kencana Prenada Media Group, 2008), page. 22

13 Barda Nawawi Arief, Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara, cited from Elmayanti, "Kebijakan Legislatif Dalam Penanggulangan Kejahatan Melalui Pembaruan Pelaksanaan Pidana Penjara dengan Sistem Pemasarakatan di Indonesia" in repository.unand.ac.id accessed on 31 December 2022

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out a task/leadership and determining courses of action.¹⁴ The use of penal means in governing society is essentially part of a policy step, namely social policy or national development policy, which is part of criminal policy and also part of law enforcement policy. Overall, it aims to protect society from crime (social defense) and ultimately achieve social welfare policy.¹⁵ This means that one of the efforts to prevent and address criminal problems is through the use of criminal law policy (penal policy). The prevention and control of crime need to be carried out through a “policy approach,” meaning¹⁶:

a. There is integration (integrity) between criminal policy and social policy.

b. There is integration (integrity) between crime prevention efforts with both penal and non-penal approaches, Policies formulated to combat crime through criminal law policy can utilize both penal and non-penal means. Policy with penal means (repressive) refers to crime prevention efforts that utilize criminal sanctions. Criminal policy with non-penal means (preventive) means crime prevention efforts that do not involve criminal law.¹⁷ In a broad sense, criminal law policy can encompass policies in the field of substantive criminal law, formal criminal law, and the implementation of criminal law.¹⁸ The use of criminal law as one of the means to combat crime is carried out through a systematic process known as criminal law enforcement, which, in a broad sense, is seen as a policy process.¹⁹

Indonesia, as a country that has ratified UNCLOS, has the authority and sovereignty to enforce laws related to domestic interests in waters that border other countries. In order to enforce these laws, Indonesia must align its national laws with international laws. According to Article 73 paragraph (4) of UNCLOS 1982, when the arrest or detention of foreign vessels occurs, the coastal state must promptly inform the flag state officially, through appropriate channels, about the actions taken and any penalties imposed. As stated in UNCLOS, the sovereignty of a state or a certain maritime area is measured based on the distance from the outermost island baseline, not based on other provisions, including historical background. Under UNCLOS, coastal states exercising sovereign rights in their Exclusive Economic Zone (EEZ) can take various actions such as boarding, inspecting, detaining, and initiating necessary legal proceedings to ensure compliance with regulations issued by the coastal state. In Indonesia, UNCLOS is referenced in the formation of Law No. 45 of 2009 on Fisheries. Article 69 paragraph (4) states that: “...investigators and/or fisheries inspectors may take specific actions such as burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence.” From this article, if it is proven that a foreign fishing vessel is engaged in illegal fishing in Indonesian waters, Indonesia as the coastal state has the right to preserve and protect its coastal marine resources. Indonesia can take legal actions, including sinking the vessel.

These actions are expected to have a significant impact on traditional fishing rights to obtain increased fish catches in terms of weight. It is also expected to enhance the country's economic income through abundant fisheries resources and marine products. However, this national legal policy must also consider international law, as the issues involved may generate controversy from various parties.

The international action program introduced by the FAO outlines the goals, principles, and implementation efforts to prevent, deter, and eliminate Illegal, Unreported, and Unregulated Fishing (IUU fishing). Efforts focus on regulating the responsibilities of all countries involved, including flag states, coastal states, port states where fishing vessels land, and related efforts in internationally agreed markets. Indonesia's extensive maritime territory, including inland waters, territorial waters, additional zones, and its Exclusive Economic Zone (EEZ), is susceptible to IUU fishing. Fundamentally, Indonesia already has comprehensive legal regulations regarding law enforcement in the field of fisheries. Law No. 31 of 2004 on Fisheries and Law No. 45 of 2009 amending Law No. 31 of 2004 on Fisheries are the main legislative regulations in the field of fisheries. Criminal offenses related to fisheries are comprehensively regulated in Law No. 31 of 2004 on Fisheries, covering illegal fishing, the use of hazardous fishing equipment, and environmental destruction. Additionally, a fisheries surveillance vessel has been established. Law No. 45 of 2009 amending Law No. 31 of 2004 on Fisheries provides additional authority to sink foreign-flagged fishing vessels based on sufficient preliminary evidence. This has drawn international attention, particularly regarding the justification of this authority granted to fisheries surveillance vessels, considering the International Action Program designed by the FAO. Currently, the world's waters have lost 74 percent of fish families that serve as daily food sources, such as tuna, mackerel, and bonito. This indicates a significant decline in fish populations worldwide. One of the contributing factors is weak fisheries law enforcement in Indonesia. However, according to Article 69 paragraph (4) of Law No. 45 of 2009, in carrying out their functions, investigators and/or fisheries

14 repository.usu.ac.id/bitstream/123456789/39979/4/chapter%20ii.pdf accessed on 31 December 2022

15 Trisno Raharjo, *Kebijakan Legislatif Dalam Pengaturan Hak Kekayaan Intelektual Dengan Sarana Penal*, Ctk. Pertama, (Yogyakarta: Penerbit Kantor Hukum Trisno Raharjo, 2006), page 34

16 Sudarto, *Kapita Selekta Hukum Pidana*, 1981, page. 113-114 in Barda Nawawi Arief, 2008, *Op. Cit.*, page.4-5

17 Soerjono Soekanto. *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Cited from “Pengertian Kebijakan Penal Penanggulangan Kejahatan”, in digilib.unila.ac.id/9704/3/bab%20ii.pdf accessed on 31 December 2022

18 Barda Nawawi Arief, *Op. Cit.*, page. 25

19 Elmayanti, *Loc. Cit*

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inspectors may take specific actions such as burning and sinking foreign-flagged fishing vessels based on sufficient preliminary evidence. To ensure effective fisheries law enforcement, the Ministry of Maritime Affairs and Fisheries has undertaken the securitization of IUU fishing issues through various publications and socialization efforts to highlight the impact of IUU fishing on Indonesia's sovereignty. Securitization is a form of adopting the International Action Plan to address IUU fishing in Indonesia. Nevertheless, the effectiveness of Article 69 paragraph (4) of Law No. 45 of 2009 on Fisheries concerning the burning and sinking of foreign-flagged vessels remains a question.

The policy of sinking illegal fishing vessels is indeed worthy of implementation as a "shock therapy." However, this policy needs to be backed by other measures so that the focus on combating illegal fishing is not solely on actions that are currently in the "hot news." Sinking foreign vessels is not without environmental concerns, so it must be ensured that it is done in a "clean" manner. By "clean," it means the following.

1) The stolen fish on board the vessel should be removed, seized, and auctioned by the state. The proceeds from the auction should go towards the state's revenue, the operational costs of maritime security, and incentives for security personnel involved in apprehending illegal fishing perpetrators;

2) The vessel should not contain any engines, fuel, oil, or other hazardous substances that could cause marine pollution.

The fishing gear on board should be removed to prevent further issues in the sea. Fishing gear is often made of materials that do not easily degrade, so if they are released in the sea, they can become "ghost fishing" gear, causing new problems such as coral reef damage and entrapment for turtles and fish.

3. CONCLUSION

Based on the description in the previous chapters, it can be concluded as follows:

a. Whereas in broad outline the causal factors can be categorized into 7 (seven) factors, including:

1) World fish demand (demand) is increasing on the other hand world fish supply is decreasing, there is overdemand, especially fish species from the sea such as tuna. This is a significant contributor to the problem of decreasing fish stocks at sea. In relation to the problem of Illegal Fishing, the efforts of a country which suffers losses are also something to be reckoned with.

2) The disparity in the price of whole fish in other countries compared to Indonesia is high enough that there is still a surplus in income.

3) Fishing grounds in other countries have started to run out, while in Indonesia it is still promising, even though they have to maintain a supply of fish for their consumption and have to maintain processing production in that country to survive.

4) The Indonesian sea is very wide and open, on the other hand the surveillance capabilities, especially the national surveillance fleet (patrol/monitoring vessels) are still very limited compared to the need to supervise vulnerable areas.

5) The current fisheries management system in the form of a licensing system is open (open access), the restrictions are only limited to fishing gear (input restriction).

6) There are still limited supervisory facilities and infrastructure as well as supervisory human resources, especially in terms of quantity. As an illustration, until this year there were only 446 Fisheries Investigators (PPNS Perikanan) with details at the Central KKP office 87 people, UPT 193 people and the Maritime and Fishery Service Service as many as 166 people, while 340 crew members of the Fishery Supervisory Ship. This number, of course, is not very comparable with the wide coverage of the sea area that must be monitored. This is further exacerbated by the limited facilities and infrastructure for supervision.

7) The perceptions and steps of cooperation between law enforcement officials in handling cases of fisheries crimes are still not solid, especially in terms of understanding legal actions, and commitment to operating surveillance vessels in the EEZ.

b. Whereas the legal policies implemented by the government for illegal fishing activities in Indonesian waters include:

1) Strengthening Guarding The government's next effort to tackle illegal fishing is to strengthen guarding in waters bordering other countries, such as the waters of North Natuna. Strengthening this guard by adding and strengthening patrol boats. Monitoring is carried out by the Indonesian Navy, the Maritime Security Agency (Bakamla) and the Ministry of Maritime Affairs and Fisheries (KKP) through the Illegal Fishing Eradication Task Force. In addition to arresting foreign fishermen who commit theft in Indonesian waters, patrol boats also function to protect Indonesian fishing vessels operating in border areas.

2) Ship Sinking One of the efforts made by the Indonesian government to overcome the theft of marine resources is to sink ships caught stealing fish. The sinking of this ship is a form of special action that can be carried out by Indonesian fisheries control vessels. This authority is contained in Article 69 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. In that article, fishery control vessels can stop, inspect, bring and detain ships that are suspected or should be suspected of committing violations in the Indonesian fishery management area to the nearest port for further processing. Fishery investigators or supervisors can also take special action in the form of burning and/or sinking fishing boats with foreign flags based on sufficient preliminary evidence.

3) Application of Criminal Sanctions and Fines. In addition, the government's efforts to overcome illegal fishing are also reflected in punishment through criminal sanctions in the form of fines and imprisonment for perpetrators of illegal fishing. In Article

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93, Article 94 and Article 94A of Law Number 45 of 2009 and Law Number 31 of 2004, every person who transports or catches fish without being accompanied by a fishery business license (SIUP), fishing license (SIPI), and a letter license for fishing vessels (SIKPI), punishable by five to seven years in prison and a fine of Rp. 1.5 billion to Rp. 20 billion. As for the captain who does not have a sailing license but drives a fishing and transport ship, he is threatened with one year's imprisonment and a fine of Rp. 200 million.

- 4) Confiscation of the Ship (after the Court's decision *Inkracht*), the next government effort is to grant IUU fishing vessels that have been *inkracht* to be donated to those in need such as Educational Institutions and fishermen groups.

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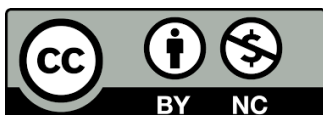
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