



Inhibiting Factors in Enforcement Law of Illegal Fishing Indonesian Seas Based on International Maritime Law

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ABSTRACT

This research aims to do and review the legal certainty from the crime of illegal fishing and factors that affect the weakness of law enforcement for foreign vessels that carry out unlawful Fishing in Indonesian marine areas. The type of research used in this research is normative legal research. Normative legal research is conducted by examining objects in the form of laws and regulations or legal norms that apply to a particular legal issue. The results showed that according to the International 1982 Maritime Law Convention (UNCLOS 1982), the enforcement of Illegal Fishing law had been regulated in Article 73 UNCLOS 1982, while in The Indonesian National Law has been handled in Article 69 Paragraph (4) of Law No. 45 of 2009 on Fisheries. Obstacles in legal certainty of illegal fishing include impenetrable law legal certainty, lack of seriousness and willingness of law enforcement, and lack of ethos and public awareness to play an active role in law enforcement of illegal fishing in the Indonesian marine territory.

Keywords: *Illegal Fishing; Law Enforcement; International Law*

1. INTRODUCTION

Indonesia consists of 17,499 islands, which means that Indonesia is one of the largest archipelagos in the world. The total area of Indonesia is about 81 million km with details of 3.25 million km of ocean, and 2.55 million km is the Exclusive Economic Zone. Only about 2.01 million km in the form of land (kkp.go.id). In addition, Indonesia has a coastline of 95,200 km³. Since the release of the latest Indonesian sea map on July 14, 2017, which is since the achievement of the sea boundary agreement between Indonesia and neighbouring countries, Indonesia's territorial waters have increased by 100 nautical miles, making Indonesia the only country in Southeast Asia that has an Exclusive Economic Zone (EEZ) of more than 200 nautical miles [1].

Thus, it is not surprising that Indonesia is a wealthy country with diverse and abundant biological resources, especially the considerable marine and fishery potential. Citing kkp.go.id, the fisheries sector relies on national development. Exports of Indonesian fisheries in 2019

reached IDR 73,681,883,000, where the value was up 10.1% from export results in 2018 [2].

One of the crimes that can be carried out across countries is illegal fishing, organized and can cause severe damage to Indonesia and other countries [3]. Indonesia's strategic location has raised the possibility of various crimes occurring in the territorial waters, such as human trafficking, smuggling, drugs, money laundering, and protected animals' trade. As an archipelago with vast territorial waters and rich in fish, the rise of illegal fishing is a challenge for Indonesia. Minimal marine surveillance capabilities and the extent of the seas encountered, making illegal fishing activities known as Illegal Unreported and Unregulated Fishing (IUU Fishing), is still a big problem for Indonesia [4].

On September 3, 2021, KKP captured two Indonesian fishing boats operating trawlers (environmentally unfriendly fishing gear) in the marine territory of East Aceh Regency. This action is also a preventive measure so that there is no horizontal conflict between fishers.

However, the KKP receives many complaints about the still operation of this trawler fishing gear. Furthermore, based on the checks carried out, the two vessels are not equipped with fishery business licenses as required (<https://kkp.go.id/djpsdkp/artikel/34066-kkp-tangkap-dua-kapal-ikan-trawl-di-aceh>).

That case proves that cases of illegal fish theft in Indonesia are still common. This is very disturbing and very detrimental to the country. Examples of real losses suffered by Indonesia due to illegal fishing occurred in the Natuna Sea region. The Secretary-General of the Ministry of Marine Affairs and Fisheries (KKP) said that The total loss in the fisheries sector in the Natuna Sea, Riau Archipelago reached IDR 30 trillion, from the potential for fisheries, should have reached IDR 120 trillion per year. (<https://www.google.com/amp/s/amp.kompas.com/regional/read/2021/04/12/172819478/negara-merugi-hingga-rp-30-triliun-tiap-tahun-akibat-pencurian-ikan-di>).

Law No. 17 of 1985 concerning Ratification of the United Nations Convention of the Law of the Sea results from the ratification of the Convention on the Law of the Sea (UNCLOS), which contains the Unitary State of the Republic of Indonesia. Therefore, Indonesia is fully sovereign over its 12-mile territorial waters over the Exclusive Economic Zone (EEZ), ancillary zones, and the continental shelf [7].

Regarding the widespread lack of law enforcement in Indonesia regarding fisheries, the author is interested in writing an article entitled Illegal Fishing Law Enforcement by Foreign Ships in Indonesian Sea Territory in terms of International Maritime Law. The problems in this research are what are the enforcement efforts against Illegal Fishing carried out by foreign vessels. How about Indonesian sea area?

2. METHOD

This research uses a normative juridical approach by specializing in literature research using secondary and primary data. Secondary data in the form the literature materials, both primary materials, namely laws and regulations, and secondary materials inform the relevant books, especially along with the handling of Illegal Fishing in Indonesia. Seen from the results of research conducted, researchers can find out the obstacles in dealing with Illegal Fishing in Indonesia.

3. LITERATURE REVIEW

In the international definition, the crime of fisheries is not just illegal fishing but also includes unreported Fishing and unregulated Fishing or better known as Illegal, Unreported, and Unregulated Fishing (IUU Fishing) [7]. In addition, the term refers to the policy and management of fisheries in any fishing activities in the

sea. It is carried out in a way that contradicts or avoids laws related to the conservation and management of fishing, both domestic and international [8].

Illegal fishing can be interpreted as fishing activities by fishers, which are carried out irresponsibly in violation of applicable laws and regulations. One example is fishing using fishing gear that can damage marine ecosystems [9]. IUU fishing [7] can be categorized into three groups:

- a. Illegal fishing is the illegal fishing activity in the territorial waters or EEZ of a country or does not have permission from that country;
- b. Unregulated fishing is the activity of fishing in the territorial waters or EEZ of a country that does not comply with the rules applicable in that country; and
- c. Unreported fishing is the fishing activity in the territorial waters or EEZ that is not reported both operationally and ship data and catches.

The arrangements related to Illegal Fishing according to International Law [9] are:

- a. United Nations Convention on the Law of the Sea 1982
- b. Food and Agriculture Organization Compliance Agreement 1993.
- c. United Nations Implementing Agreement 1995 At its core UNIA 1995.
- d. Code of Conduct for Responsible Fisheries 1995.

As a consequence of the ratification of UNCLOS 1982 into Law No. 17 of 1985 concerning the Ratification of the United Nations Convention on the Law of the Sea (UNCLOS 1982), the fisheries law as a juridical basis for the enforcement of fisheries practices in Indonesia will automatically adjust the substance of UNCLOS 1982. Article 102 of Law No. 45 of 2009 on Amendments to Law No. 31 of 2004 on Fisheries stipulates that the provisions of criminal acts in fisheries law do not apply to perpetrators of fish theft in the territory of Indonesia's Exclusive Economic Zone (ZEEI) unless there is an agreement between the countries concerned [10].

The practice in the field reflects that the punishment given to fish thieves is only a maximum fine of 20 billion rupiahs, as mentioned in article 93 paragraph (2) of Law No. 45 of 2009 concerning Changes to Law No. 31 of 2004. However, this raises new problems that arise again if the perpetrator is unable to pay the fine according to the court's decision, then the criminal fine cannot be replaced with an illegal cage as mentioned in the Criminal Code of Indonesia.

Law No. 45 of 2009 on Fisheries is a positive government action that is used as a basis or rule in deciding legal issues related to illegal fishing. The

Fisheries Act adopted several provisions of UNCLOS law 1982.

In the view of the legal EEZ area, this cannot be equated with legal treatment in the territorial territory that is the sovereign territory of a state. This is also affirmed in Law No. 32 of 2014 on Marine, which states that its management must follow the direction of the state's growth. Therefore, the supervision of the marine must reflect the dominion of the nation that must be maintained sustainability and sustainability, and not supposed to be exploited to meet the economic needs controlled by certain parties [11].

4. RESULT AND DISCUSSION

4.1. Foreign Vessels Enforcing Laws Against Illegal Fishing in Indonesian Marine Territory

The rise of illegal fishing activities in Indonesia is influenced by its strategic geographical location and the fisheries management system in Indonesia itself and because the supply of fish is decreasing due to the increasing demand for fish on earth. This is a driving factor for foreign ships to take advantage of this potential, both legally and illegally [3]. Based on data from the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia, state losses due to illegal fishing activities reach IDR 300 trillion per year. This figure is equivalent to 25% of Indonesia's total fishery potential. According to [12] the things that make influence the occurrence of illegal Fishing in Indonesia are divided into two, namely:

1. Internal factors, namely still weak enforcement and regulation of fisheries. This is because there are no rules that regulate Fishing in Indonesia. In addition, the number of qualified law enforcement officers is not proportional to the sea area in Indonesia, resulting in weak legal certainty related to IUU fishing in Indonesia.
2. External factors, such as global fisheries dynamics such as rising global fish consumption rates and fishing ground in other countries, are dwindling, forcing fishing operators to operate illegally by fishing in Indonesia without complying with the rules imposed.

In addition, some factors that can cause illegal Fishing [12] are:

- a. Limited means and infrastructure of supervision;
- b. Limited funds for surveillance operations;
- c. Limited fisheries police personnel and Civil Servant Investigators (PPNS);
- d. Still limited ability of Indonesian fishers to take advantage of the potential wealth of fish in Indonesia waters, especially EEZ;

- e. Lack of raw materials in the area of origin of the island, causing them to expand into Indonesian territory;
- f. The ability to monitor every movement of surveillance patrol ship at sea can be known by foreign fishing ships because of sophisticated communication tools, so the results of operations are not optimal.

According to Article 29 of the Fisheries Act, fisheries business in the Fisheries Management Area in Indonesia only is handed out by local citizens or Indonesian legal entities. Exceptions to the provisions taken from paragraph (1) shall be granted to foreigners or foreign legal entities conducting fishing efforts in ZEEI during the obligations of the Unitary State of the Republic of Indonesia under international treaties or applicable international rules law. This law stipulates that everyone fishing in the fishing area, cultivation, transportation, processing, and marketing of fish in fishery section Management Area of the Indonesian area and EEZ must have a Fisheries Business License (SIUP), Fishing License (SIUP). (SIPI) and Fish Transport Ship Permit (SIKPI).

As a country that is often a victim of illegal fishing, according to Kamal(2018), Indonesia took two approaches to prevent illegal fishing in the State Fisheries Management Area of the Republic of Indonesia, namely:

- a. Soft Structures Approach

This is a preventive approach such as establishing legislation to complement the legal needs related to eradicating fish theft crimes. Governments can also review international conventions on maritime law and promote bilateral agreements with other countries to eliminate illegal fishing jointly.

- b. Hard Structure Approach

This approach is a repressive effort by the government to conduct fishing fleet supervision and consistently implement Monitoring, Control, and Surveillance (MCS). The government is also working to improve facilities and infrastructure to clear the sea from illegal fishing. The state also seized ships used to take unlawful fish theft. Then in the enforcement of the law that applies to the criminal act of fish theft, the Indonesian government decided to sink the ship because the ship's auction is feared to cause the mafia to be then resold by the mafia to the original owner. In addition, if the vessel is given to Indonesian fishers or universities for research, it will require considerable maintenance costs. If unable to maintain the ship, in the end, the sinking of the vessel is the most effective solution

In Indonesian Law No. 45 of 2009, there are two ways of sinking foreign fishing vessels in ZEEI that can be done by the Indonesian government through the Authority, namely:

- a. Sinking of the ship through a court ruling
- b. Arrest by the competent Authority

The sinking boat policy raises concerns that it will impact relations between countries, especially the countries of origin of the fishermen. The policy of sinking the ship raises concerns that it will affect relations between countries, especially the countries of origin of the fishermen. Therefore, this action can be classified as a violation of human rights, a violation of the law and is considered an inhumane act. However, according to the results of the FGD [11] with maritime law experts from UNPAD, the sinking of a ship that violates the rules in Indonesian marine will not derail relations between countries because:

- a. Crimes committed by a citizen, none of which is permitted by the country of origin
- b. The sunk foreign fishing boat is a vessel that doesn't have an operating permit to catch fish in the Indonesian marine.
- c. Drowning is carried in the sovereign territory and is Indonesia's sovereign right in ZEEI.
- d. Drowning is carried out based on the legal umbrella, namely Article 69 paragraph (4) of Fisheries Law No. 45 of 2009 on Fisheries. Before 2009, indeed, the drowning process must go through a court ruling which law has determined.

4.2. Factors that affect the weakness of Legal Action Against Fishing by Violating the Law by Foreign Vessels in Indonesian Marine Territory

The rise of IUU fishing in Indonesia has resulted in significant losses for Indonesia. There are three impacts caused by IUU fishing for Indonesia, according to [12], namely:

- a. Ecological impact
Illegal fish thieves sometimes use toxins and other harmful materials that cause damage to coral reef ecosystems, although they endanger the health of humans and other fish species.
- b. Economic impact
Illegal fish theft can make the fish catch obtained reduced so that society also loses its source of income.
- c. The image of Indonesia in the global world

As a country that ratified UNCLOS, Indonesia is committed to combating any maritime crimes that violate International Law and National Law. The use of IUU fishing in Indonesia is considered Indonesia's failure to control the activity in its territory. With a bad image in the global community due to failure to prevent IUU fishing, Indonesia becomes prone to protest and criticism from the international community. In addition, Indonesia's poor image can also lower sanctions or embargoes from international organizations or other countries.

The government has made many efforts to tackle illegal fishing, including by sinking or burning ships that steal in Indonesian territorial waters, but in its implementation often encounters obstacles. According to [13], they are :

1. Objects of Law Enforcement that are Difficult to Penetrate Legal Regulations

As the State Enforcement Officer, the law enforcement officer or civil servants are not explicitly regulated in legal regulation on Fisheries. Therefore, the use of Article 56 paragraph (1) of the Criminal Chipper that qualified criminals as persons who commit, who ordered to save and commit criminal acts can also be applied in the illegal fishing crime involving many parties.

2. Weak Coordination Between Law Enforcement

Weak coordination between legal agencies can lead to overlapping authorities and policies between these agencies. This is prone to triggering matters of interest. From this, it can be seen that the main problem with the weak eradication of illegal fishing is the lack of coordination.

3. Proof Issues

The process of proving illegal fishing requires an expert who plays a role to explain the marine conditions and the impact of illegal fishing. During this process, it requires a high cost and takes a lot of time, so proving to ensnare the perpetrators who are behind the incident of fishery crimes is also very difficult. Often those designated as defendants and suspects are those who are only found at the scene. For example, Captain Of Ship, ABK, and others.

4. Criminal Sanctions Formulation

In-Law No. 45 of 2009 on Fisheries, there are heavier criminal penalties than other criminal provisions. However, there is no arrangement regarding criminal sanctions related to minimum limits or the lowest limits. Therefore, the enforcement of sanctions hasn't been reduced guts for illegal fishing actors. In addition, this law has not regulated the criminal sanctions given to corporate actors, although additional sanctions on criminal offenders.

5. Lack of Knowledge and Spirit of Fighting Law Enforcement Apparatus

The insight and integrity of these law enforcement officers are related to the mastery of the material and formal law. This could be attributed to the rapid development of society becoming more modern. Telecommunications and technology can trigger fishery crimes with new and varied types and modus operandi.

6. Lack of Facilities and Infrastructure

Illegal fishing perpetrators are likely to use large ships with advanced technology to balance the strength vessel to run checks and arrest unlawful fish thieves in Indonesian waters. However, according to [12], this does

not seem to be an obstacle for illegal fishing actors to continue carrying out activities that violate the Law in Indonesian marine due to the limitations of these facilities and infrastructure.

5. CONCLUSION

Certainty of Law against Illegal Fishing under international sea law is stipulated in the United Nations Law of the Sea Convention 1982 (UNCLOS 1982) in Article 73. Law No. 45 of 2009 Indonesia on fisheries regulates strictly sanctioning the burning or sinking of foreign ships that carry out illegal fishing acts in Indonesian marine.

Barrier to handling Illegal Fishing barriers target difficult law enforcement to break through the law. The object in question is the perpetrator, the mastermind involved in the crime of illegal fishing. In addition, weak coordination between law enforcement potentially causes the overlapping of their respective authorities and policies, making them vulnerable to causing conflicts of interest.

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