

Indonesian Jurisdiction in the Policy of Sinking Foreign-Flagged Ships in Indonesia's Exclusive Economic Zone

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Abstract— Indonesia as an archipelagic country which has vast oceanic economic potential for public welfare. However, due to Indonesia's position between the two continents and the two Oceans, it is prone to illegal fishing. The practice of illegal fishing is carried out by foreign-flagged fishing vessels that steal fish in the Indonesian Exclusive Economic Zone (ZEEI). Illegal fishing violations the Indonesian government must make law enforcement efforts to prevent and overcome illegal fishing. Efforts that have been made by the Indonesian government are shooting and or sinking foreign-flagged vessels that have sufficient evidence of criminal acts. The government's strict action to deal with illegal fishing through the sinking of the ship has received many rejection reactions. In this paper discusses what is the basis of Indonesian jurisdiction in the sinking of foreign-flagged ships and does the sinking policy contradict international sea law conventions? The type of research used in this study is normative legal research that examines the juridical aspects of the statutory approach (Statue Approach), which examines problems based on laws and regulations relating to illegal fishing in Indonesia. The results of this study that based on the provisions of Article 69 of the Fisheries Law the Indonesian government has jurisdiction to carry out a policy of sinking foreign-flagged vessels that have sufficient evidence to have stolen fish in the Indonesian EEZ. The policy of sinking foreign-flagged vessels is in accordance with the provisions of Article 73 of UNCLOS, so that it does not conflict with the provisions of the International Law of the Sea Convention.

Keywords—*Jurisdiction, Drowning, foreign-flagged ships, Exclusive Economic Zone, Indonesia*

I. INTRODUCTION

Indonesia consists of 17,508 islands with a coastline of 81,000 km and a sea area of 5.8 million, considered to have the diversity of wealth contained therein very potential for the country's economic development. Indonesia's sea area covers $\frac{3}{4}$ (three quarters) of the total area of the Republic of Indonesia. The vast water area is a burden of a large responsibility in managing and securing it. To secure a vast sea, it requires strength and capability in the maritime field in the form of modern marine equipment and technology and reliable human resources to manage the resources contained in it [1]. In addition, Indonesia are estimated to have an area of 75.000 km² which is about 12% to 15% of the world's coral

reefs. In the Indonesian ocean was found 362 species of Scleractinia (rock coral), Indonesia is at the core of the distribution of the world's rock corals so this has made Indonesia became a tourist destination for coral reefs [2].

As an Indonesian archipelago, it has a marine economic potential of US \$ 1.2 trillion per year [3]. These marine resources have enormous economic potential that can be utilized for the welfare of the community. However, due to Indonesia's cross position between two continents (Asia and Australia) and two Oceans (Pacific and Indian), Indonesia is prone to illegal fishing [4]. The utilization of these marine resources has not yet been optimal, hampered by frequent criminal acts in the fisheries sector. Indonesia's losses due to illegal fishing practices are quite large. Data from the World Food Agency or FAO noted that Indonesia's losses per year due to illegal fishing were Rp.30 trillion [5].

The practice of illegal fishing, among others, is carried out by foreign-flagged fishing vessels and foreign fishing vessels that steal fish in the territorial waters of Indonesia as well as the use of crew members who are not in accordance with applicable regulations. State losses due to illegal fishing (illegal fishing) by foreign fishing vessels are feared to increase in line with the increasing number of cases of violations in the fisheries sector. Most of the perpetrators of the illegal fishing cases revealed were foreign fishing vessels, including Malaysia, China, Vietnam, Thailand, the Philippines, Papua New Guinea and Myanmar [6].

With so many cases of illegal fishing (illegal fishing) violations carried out by foreign-flagged vessels in the Indonesian Exclusive Economic Zone (ZEEI), the Indonesian government must make law enforcement efforts to prevent and overcome illegal fishing in the ZEEI. The efforts that have been carried out by the Indonesian government are by shooting and or sinking foreign-flagged fishing vessels that have sufficient evidence of criminal acts of fisheries in Indonesia's territorial waters (EEZ). The argument for the sinking of foreign fishing vessels will have a deterrent effect on foreign fishing vessels because law enforcement and legal sovereignty in Indonesia are very hard. The government's decisive action in dealing with illegal fishing through the sinking of the ship received a rejection reaction, including the one conveyed by the Governor of Maluku that the act of

sinking the ship had an adverse impact on the development of marine and fisheries [7] Focus in this article is the basis of Indonesian jurisdiction in the policy of sinking the foreign-flagged vessel and the policy of sinking the foreign-flagged ship against the international sea law convention.

II. RESEARCH METHODS

The type of research that used in this study is normative legal research that examines the juridical aspects of the statute approach. Which examines problems based on national and international legislation in the field of fisheries in the Indonesia Exclusive Economic Zone.

III. RESULT AND DISCUSSION

A. Indonesian Jurisdiction over Exclusive Economic Zones

Sovereignty as the highest state power is defined in the powers or rights of the state, among others in jurisdiction (making and enforcing legal regulations). Sovereignty, jurisdiction and other rights. Indonesia on its waters is stipulated in various products of National and International Law and is carried out with the activities of upholding sovereignty and law in the sea. Indonesia as a sovereign independent country has jurisdiction including sovereign rights over its territory, including in the Exclusive Economic Zone (EEZ). EEZ is an area outside and adjacent to the territorial sea, which is subject to the special legal regime stipulated in this chapter based on which the rights and jurisdictions of the coastal state and the rights and freedoms of other countries, are regulated by the relevant provisions.

Whereas what is meant by the Indonesian Exclusive Economic Zone (EEZ) is an outside route and is based on the sea of Indonesian territory as stipulated by the law that applies to Indonesian waters covering the seabed, the land below and the water above it with an outer limit of 200 (two hundred) nautical miles measured from the base line of the Indonesian sea. UU no. 5 of 1983 concerning ZEEI is a juridical realization of the expansion of sea territories concerning the state of the economy in its management, supervision and preservation so that efforts to improve the welfare of the nation by utilizing marine natural resources can be carried out as well as possible.

Indonesia's marine area is known for its wealth and diversity of natural resources, both renewable natural such as fisheries, mangroves, coral reefs and others, and non-renewable such as minerals. In principle, all elements of marine natural resources are interdependent and influence each other as an integrated life support system.[8]

The international legal regime on ZEEI that has been developed by the international community is intended to:

1. Protect the coastal state from the danger of possible depletion of living natural resources near its coast by

the activities of other countries in managing fisheries based on the free sea regime. With the help that \ living natural resources in addition to not knowing the boundaries of the area and also will be able to recover, but it does not rule out the expiration of these sources if no attention is paid to the catch and frequency of arrests.

2. Protecting coastal countries' interests in the field of marine environment conservation and marine scientific research by utilizing natural resources in the zone.

In international law, States are recognized as having the right, power, or authority to make, enforce, implement and / or impose national laws or regulations on legal objects, as well as legal events that occur both inside and outside its territorial boundaries, where the country has links with, or has an interest in, these legal objects. Theoretically, the concept of state jurisdiction is related to the concept of state sovereignty. International law gives jurisdiction to the state, because the state has the highest sovereignty or power. It is from this country's sovereignty that the state is recognized to have jurisdiction based on international law. Based on sovereignty, the right, power or authority of the state can be derived to regulate internal and external problems. From that sovereignty, the state jurisdiction is born. With the right, power and authority or with the jurisdiction, a country can regulate in more detail and clearly the problems it faces, so as to realize what is the goal of the country. Each country has jurisdiction based on international law on legal objects that contain international aspects, including legal events.

B. Regulation of Law Enforcement in Illegal Fishing in Indonesia

The legal basis for law enforcement against illegal fishing consists of:

1. Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone (EEZ). This law is made to accommodate all the problems that occur in the EEZ, so that it can be prevented, which means that it also shows the vigilance of Indonesia in reaching out to all possibilities that could harm or pose a danger to marine sustainability.
2. Law Number 17 of 1985 concerning the Ratification of the UN Sea Law Convention 1982. This law is an agreement of the Indonesian State to be bound by the International Law of the Sea Convention.
3. Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries. There are 3 agencies that are authorized in fisheries law enforcement, namely the Department of Maritime Affairs and Fisheries (DKP), the Indonesian National Navy (TNI AL).

In connection with the efforts of law enforcement in the territorial sea of Indonesia relating to the prevention of criminal acts of fisheries, there are 3 institutions that are authorized as investigators of certain criminal acts in the sea, each of which is based on a separate law. These institutions are:

1. Republic of Indonesia National Police regulated in Act Number 2 of 2002
2. Indonesian National Army In Law Number 34 of 2004
3. Civil Servant Investigator regulated in Law Number 8 of 1981 (Republic of Indonesia State Gazette of 1981 Number 76 concerning Criminal Procedure Code)

Whereas those related to law enforcement at sea which are regulated in the above legal provisions have their respective authorities, namely:

- a. Indonesian national army. In this case the Navy (Indonesian Navy). The authority of the Navy in carrying out its duties is to uphold the law in the sea and throughout Indonesian territorial waters. In the Law Number. 5 of 1983 concerning Exclusive Economic Zone, in Article 14 paragraph (1) which states: Law enforcement officers in the field of investigation in the Indonesian Exclusive Economic Zone are Navy Indonesian National Army Officers.
- b. Indonesian National Police (Polri). The Indonesian National Police is authorized to investigate all criminal acts in accordance with criminal procedural law and other laws and regulations.
- c. Civil Servant Officer. To maintain and secure the waters of national jurisdiction, it is necessary to have the authority of government institutions based on aspects of legal legality in accordance with the laws and regulations. Authority to investigate civil servants in conducting criminal investigations in the territorial waters of the sea is also expressly stated in various regulations.

The granting of authority to these institutions to be involved in the investigation process has a juridical basis, both in the Criminal Procedure Code (KUHAP) and Law Number 2 of 2002 concerning the Indonesian National Police.

C. Indonesian Government Legal Basis of Foreign Sink Vessel Drowning Policies

In connection with the Indonesian Government's legal basis for the policy of sinking foreign-flagged vessels. According to Law No. 45 of 2009 concerning Fisheries in Article 69, it is stated:

- 1) The fishery supervisory vessel functions to carry out supervision and law enforcement in the field of fisheries in the territory of the Republic of Indonesia

fisheries management. The meaning of a fishery supervisory vessel is a government vessel that is given a specific sign to conduct supervision and law enforcement in the field of fisheries.

- 2) The fishing supervision vessel as referred to in paragraph (1) can be equipped with firearms.
- 3) Fisheries supervisory vessels can stop, inspect, carry, and hold ships that are suspected or reasonably suspected of having committed violations in the Republic of Indonesia fisheries management area to the nearest port for further processing.
- 4) In carrying out the functions referred to in paragraph (1) investigators and / or fisheries supervisors can take special measures in the form of burning and / or drowning of foreign-flagged fishing vessels based on sufficient preliminary evidence.

Article 69 paragraph (4) gives Indonesian fisheries investigators or supervisors the right to take special actions such as the sinking of foreign vessels with sufficient preliminary evidence, which is in accordance with the explanation of this article; Sufficient preliminary evidence is intended as preliminary evidence to suspect that there is a criminal offense in the field of fisheries by a foreign-flagged fishing vessel, for example a foreign-flagged fishing vessel does not have a fishing license, and actually catches and / or transports fish when entering the fishery management area Republic of Indonesia. This provision indicates that the special action cannot be carried out arbitrarily, but only if the investigator and / or fishery supervisor knows that the foreign-flagged fishing vessel has committed a criminal act in the field of fisheries.

Based on Article 69 of the Fisheries Law, the Indonesian government has jurisdiction to carry out a policy of sinking foreign-flagged vessels that have sufficient evidence to have stolen fish in Indonesian territorial waters. In the opinion of Professor of International Law, Faculty of Law, University of Indonesia, Melda Kamil Ariadno, there is no violation of any law in the policy of sinking ships caught in committing crimes in Indonesian waters. Handling illegal fishing by sinking the vessels used by the perpetrators is legal under national law, namely Article 69 paragraph (4). Furthermore, Article 76A states that investigators and / or fisheries supervisors can take special actions in the form of burning and / or drowning foreign-flagged fishing vessels based on sufficient preliminary evidence. Objects or tools used in and / or resulting from criminal acts of fisheries can be seized for the state or destroyed after obtaining approval from the head of the district court.

In connection with the policy of sinking foreign vessels, the Minister of Maritime Affairs and Fisheries Susi Pudjiastuti has made a sinking Standard Operating Procedure (SOP) which refers to the applicable law. The SOP for the sinking of the vessel is stated in the Regulation of the Minister of Marine

and Fisheries, Number 37 / PERMEN-KP / 2017 concerning the Standard Operating Procedure for Law Enforcement of the Task Force to Eradicate Illegal Fishing. The scope includes the collection and analysis of data and information and the determination of the operating area; investigations on land, sea and air in the operating area; investigation; prosecution, legal remedies, and execution of court decisions that have permanent legal force.

In the SOP mentioned before carrying out acts of arson and / or sinking of the vessel, action can be taken:

- a. Protect as much as possible all fishing boat crews;
- b. Inventory all equipment and equipment available on fishing vessels by mentioning the condition in full and in detail;
- c. Documenting visuals using a camera and / or audio video recorder;
- d. The fish caught by the fishing vessel that has been burned and / or sunk is set aside for the purpose of verification;
- e. Making Minutes of Burning and / or Sinking of Fishing Vessels to be included in the seafarer's news by the relevant agency.

The Legal Director of the Indonesian Marine Security Agency (Bakamla), Yuli Dharmawanto, argued that the policy of sinking ships resulting from illegal fishing operations was in accordance with the applicable law in the territory of Indonesia. Task Force Special Staff Coordinator (Task Force 115), Mas Achmad Santosa, explained that dozens of ships were sunk every month. As many as 304 sinking ships belong to the colors of foreign countries. He stressed that the policy of sinking ships resulting from the arrest of illegal fishing cases has proven effective in reducing criminal offenses in the past two years.

D. Illegal Fishing Arrangement in the Law of the Sea Convention

In 1985 through Law Number 17 of 1985, Indonesia ratified the 1982 Convention on the Law of the Sea, or better known as the United Nations Convention on the Law of the Sea (UNCLOS) 1982, which means Indonesia has recognized that the articles in the 1982 UNCLOS has become a positive law in Indonesia. Therefore, in looking at the territorial waters and the sea, Indonesia must see UNCLOS 1982 as a reference for legal provisions.

In connection with the law enforcement by the coastal state over the EEZ regulated in article 73 UNCLOS 1982. Article 73 paragraph (1) states that the coastal state can take action to protect its rights at the EEZ such as stopping, inspecting and arresting foreign vessels proven to be illegal Fishing. Article 73 paragraph (2) states that ships and submarines must be

released immediately after providing sufficient guarantees. Article 73 paragraph (3) explains that the punishment for violation of the Fisheries Law in EEZ does not include imprisonment. Article 73 paragraph (3) followed by article 102 in the Fisheries Law, which regulates the penalties given for criminal acts of fisheries that occur in the Exclusive Economic Zone may not be in the form of confinement, unless there is agreement from both parties of the state.

In Article 73 of UNCLOS it is not detailed in discussing whether or not to sink illegal fishing vessels, therefore the policy of sinking ships by bombing is not contrary to UNCLOS because the subject protected by article 73 paragraph (3) is not a ship. The people can be given a fine or deportation without being given imprisonment while the ship can be confiscated or sunk by the Government of Indonesia, in accordance with the applicable legal procedures and procedures. This is appropriate when referring to the Fisheries Law, Article 69 paragraph (1 and 4). Article 76A and Article 38 also Article 45 of Law Number 8 of 1981 concerning the Criminal Procedure Code, the policy of sinking foreign-flagged fishing vessels for illegal fishing, basically is a term used for special actions in the form of destruction of evidence in the form of foreign-flagged fishing vessels that are used to commit fisheries (illegal fishing). Destruction can be done in a way [9].

- a. Burned;
- b. Detonated;
- c. Drowned, by:
 1. Leaked on the wall;
 2. Open the sea tap

From the description above, it can be concluded that the Indonesian government policy in the sinking of foreign vessels that steal fishes is not wrong in international law. This is according to the opinion of Professor of International Law, Faculty of Law, University of Indonesia, Melda Kamil Ariadno, who stated that there was no prohibition on the policies of the coastal state in UNCLOS which drowned the ship for violations of its exclusive economic zone. In this case UNCLOS only regulates penalties for those who are accused of not being confined [10].

IV. CONCLUSION

The basis of Indonesian jurisdiction in the policy of sinking foreign-flagged vessels is Article 69 of the Fisheries Law which states that 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. Based on these provisions the Indonesian government has jurisdiction to carry out a policy of sinking foreign-flagged vessels that have sufficient evidence to have stolen fish in Indonesian territorial sea.

The policy of sinking foreign-flagged ships carried out by the Indonesian government in accordance with the provisions of Article 73 of UNCLOS which states that a coastal country can take action to protect its rights at the EEZ such as stopping, inspecting, and arresting foreign vessels proven to be illegal fishing. Thus the policy of sinking foreign-flagged ships by the Indonesian government does not conflict with the International Law of the Sea Convention

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