THE IMPLEMENTATION OF SINKING VESSEL POLICY AS AN EFFORT TO PROTECT INDONESIAN FISHERY RESOURCES AND TERRITORIAL WATERS

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Abstract

Indonesia is the largest archipelagic state in the world with 6,166,163 square kilometers of territorial waters. The large of Indonesian territorial waters can be detailed into 0,3 millions square kilometers of territorial sea, 2,8 millions square kilometers of archipelagic waters, and 2,7 millions square kilometers of Exclusive Economic Zone. The potential of marine resources of Indonesia naturally has become life environment which has four strategic meanings: (1) As the warehouse of natural resources and media to find livelihood, (2) As the unifier of people, (3) As a defense medium, and (4) as a liaison media. The potential economic value of eleven sectors of marine is estimated to reach USD 500 billions (4,500 trilliums) each year. But ironically the wealth of maritime often becomes easy target for illegal fishing from other nations. Based on data from Food and Agricultural Organization (FAO) the detriment of illegal fishing in Indonesia has reached Rp.30 trilliums each year, with counting the level of detriment which reach 25% from total fishery resources in Indonesia. It means 25% times 6,5 million tons generates an amount of 1,6 million tons or 1,6 billion kilograms. The result of detriment itself is still lower if it compares with estimated detriment written by the government which reaches Rp.300 trilliums each year. In 2014, 78 foreign vessels were seized up for robbing fish in Indonesian Exclusive Economic Zone, especially in Natuna and Anambas waters. Illegal fishing makes people of Anambas, whose 90% of the population work as fishermen, becomes eliminated. In a way to eradicate illegal fishing, the government of Republic of Indonesia does concrete action to protect its marine resources by applying sinking vessel policy. The sinking vessel policy to foreign flagged vessel in IUU fishing is a part of effort to increase the effect of deterrence or repellent of territorial violation which can harm and threat state’s sovereignty.

Keywords: Security, Fishery, Illegal fishing, Sinking Vessel

Background

As an Archipelagic state, Indonesia is benefited with its location which lies in a cross position of the world, between two continents; Asia-Australia continents, and two oceans;
Indonesia-Pacific ocean.\(^1\) After the validity of *United Nations Convention on the Law of the Sea* in 1982 which has been valid and effective in 16\(^{th}\) of November 1994, then the wide of Indonesia territory increases become 8,193,163 square kilometers, consist of 2,027,087 square kilometers of land and 6,166,163 square kilometers of waters. The large of Indonesian sea can be detailed into 0,3 millions square kilometers of territorial sea, 2,8 millions square kilometers of archipelagic waters, and 2,7 millions square kilometers of Exclusive Economic Zone.\(^2\)

The potential of Indonesian marine resources which naturally has become life environment has four meanings which very strategic: (1) As the warehouse of natural resources and media to find livelihood, (2) As a unifier of people, (3) As a defense medium, and (4) As a liaison medium. As we know that two third of trade traffic is through the sea. Therefore, how great the benefits of the sea for the sustainability of world economic.\(^3\) The wealth of natural resources and services of marine environment can be used for improvement and prosperity of nations for at least through 11 sectors of marine economic: (1) marine fisheries, (2) marine cultivation, (3) processing fish industry, (4) marine biotechnology industry, (5) mining and energy, (6) marine tourism, (7) mangrove forest, (8) sea transportation, (9) small islands resources, (10) maritime industry and services, and (11) non-conventional natural resources. Overall, the potential economic value from all of those eleven marine sectors is estimated to reach USD 500 billions (4.500 trilliums) each year.\(^4\) Based on the data from Food and Agricultural Organization (FAO), the detriment of illegal fishing in Indonesia has reached Rp. 30 trilliums each year, by counting the level of detriment which reach 25% from the total of fishery resources in Indonesia. It means 25% times 6,5 million tons generates 1,6 million tons or 1,6 billion kilograms.\(^5\) The result of detriment itself is still low

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\(^2\) *Id.*, pg.3

\(^3\) Slamet Soebiyanto, 2007, *Keamanan Nasional ditinjau dari Perspektif Tugas TNI Angkatan Laut*, Majalah Patriot, pg. 10


\(^5\) accessed on 8 February 2017

\(^5\) Data according to FAO on the value of loss from illegal fishing that frequently happens in Indonesian waters http://www.p2sdkpkendari.com/index.php?pilih=newes aksi=lihat&id=176, accessed on 14 February 2017
if it is compared with the estimated detriment written by the government that reach up to Rp. 300 trilliums each year.\(^6\)

There are a lot of impacts of illegal fishing that not only harms the nation economically by losing trilliums of Rupiah, but also destroy the economy of fishermen, and often called as a conflict or tension trigger in the diplomatic relation between nations, especially concerning bilateral relation between a country and other neighboring countries. It is because sea is the boundary of a nation with the other nations where the bordering points are determined based on bilateral and multilateral extradition, which means the limit of the power of a country is as far as of the outer line of their territorial border.\(^7\) In some cases of traditional fishing right, which often happen is in the frontier of Indonesia – Malaysia and Indonesia – Australia. So, it causes worries to inflict disruption to the state’s sovereignty and threat the preservation of marine resources which caused by illegal fishing, and also concern negative image that Indonesia cannot protect its marine resources very well.

The impact of illegal fishing can also be found in the context of environment and ecology. With the policy from the government related to fishing, it must fill the requirements and the criteria of fishing permits, establishment of fishing ground, the types of the fish that will be caught, the proper amount of fish which match to the qualification of the vessels, the territory of fishing activity, and the equipment.\(^8\) Basically, These rules have philosophic and juridical meaning, in order to protect the sustainability of the resources itself. The impact of illegal fishing often damage marine and fishery resources, because the equipment that they used is not environmentally friendly and sometimes have the form of toxic materials that can damage coral reefs, as the place of fishes to live. It causes decreasing in the population of fishes in particular territorial.

In 2014, 78 foreign vessels were seized up due to fish theft in Indonesian Exclusive Economic Zone, especially in Natuna and Anambas waters. Fish theft makes people of Anambas who 90% work as fishermen becomes eliminated.\(^9\) there are so many modus that was done in fish theft, but some of them are variety activities that often happen, among others: illegal fishing

\(^6\) Cendana, Prasetyo Kanyadibya, Indonesia, Asean, dan Pemberantasan Illegal Fishing, makalahAPSC2015_Indoneisa_Asean_dan_Pemberantasan_Illegal_Fishing_Kanyadibya_C.Libre.pdf. accessed on 8 February 2016

\(^7\) Subagyo, Joko P, 2013, Hukum Laut Indonesia, Jakarta: PT. Rineka Cipta, Pg. 5

\(^8\) Id.

(catching fish without permission), have a permission but violates the laws, falsifying document, transshipment in the sea, do not activate the transmitter (especially for the ship that must use transmitter), and destructive fishing using chemical materials, biological materials, explosives materials, and equipment, tools, ways, or even construction that can endanger the sustainability of marine resources.\textsuperscript{10}

In eradicating illegal fishing case in Indonesia and as an effort of law enforcement in the sea, Indonesian government has been validated the fishery constitution No. 31 Year 2014 Jo constitution No. 45 Year 2009 on Fishery. In these fishery constitutions, the sanctions that will be given to the person who conduct illegal fishing is quite severe. For example, the obligation of each fishing vessels to must have a permit or license to conduct fishing activity, and for vessels which use Indonesian flag that violate the rules, the operator and the owner of the vessel become subject to the threat of 6 years penalty or due to Rp.2 billions fines. If the violations are done by vessel with foreign flag, the operator and the owner of the vessel are liable to the threat of 6 years penalty or due to Rp.20 billion fines.

In combating illegal fishing, the government of Republic of Indonesia also takes concrete action to protect its maritime potential. This action was executed by the establishment of the Coordinator Ministry of Maritime. This ministry has indicated that Indonesia’s sovereignty cannot be disturbed by doing a firm action in form of sinking foreign vessels that proven to conduct illegal fishing in Indonesian maritime territory. Based on this new policy, three vessels from Vietnam were detonated on 5\textsuperscript{th} of December 2014 in Natuna Sea, Riau Archipelago. Those three vessels with 33 crews and fish from the thievery which weighed more than 2,1 tons, were caught in the north of Tarempa Island, Anambas, Riau Archipelago, in the first of November 2014. A number of other vessels also will be sunk as soon as possible, they are 5 vessels in Pontianak and 3 vessels in Berau. Exploding and sinking vessel will be done to show the firmness of Indonesia in protect its maritime territory. Indonesia ensures will do any steps that important to protect its territory. The action of sinking vessel is expected to convey a message to other foreign fishermen to not

Accessed on 8 February 2016
broke the law in Indonesian territory and rob the sea wealth, and also give chary effect and decrease violation law in Indonesian territorial waters.\textsuperscript{11}

Based on the forementioned facts, it is important to do scientific studies about the application of sinking foreign vessel policy against illegal fishing in Indonesian territorial waters.

**Discussion**

A. *Policies from The Government of Indonesia in Securing the Wealth of Fishery through the sinking of foreign vessel*

Illegal fishing activities in Indonesian waters also have significant negative social impacts on fishermen and the employees of fishery processing factory. For Indonesia and countries in Southeast Asia, fisheries and forestry sectors are the main sources of food sustainability. What often happens is the massive and drastic exploitation of the sea as a major effort to improve the country's economy and the welfare of the population. Social impacts arise with the vulnerability of conflict/dispute among traditional fishermen between countries and trawlers/trawl owners. Besides, with abundant fishery resources, fish processing factories become very important. Along with the reduction of catch and illegal fishing activities, it will indirectly affect the survival of fish processing factory employees. Fish supply is reduced, causing some companies to unable to operate anymore and many layoffs occur because there is no more supply of raw materials. Fishing by foreign vessels or Indonesian fishing boats is usually directly delivered out of Indonesia through trans-shipment, which is contrary to the Regulation of the Minister of Marine Affairs and Fisheries No. 16 Year 2006, requiring that fish catches be lowered and processed on land.\textsuperscript{12}

The rise of Illegal Unreported and Unregulated (IUU) Fishing activities that occur in Indonesian sea is increasingly worried, based on data released by the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia, the loss of the state due to illegal fishing reaches 300 trillion rupiah per year, by calculating the loss rate which reaches 25% of the total potential of

\textsuperscript{11} Tabloid Diplomasi. Edition December 2014. *Kerjasama Maritim ASEAN.*
http://www.tabloiddiplomasi.org/previous-issuse/162-desember-2014/1289-kerjasamamaritim-
Accessed on 10 February 2017

\textsuperscript{12} Dina Sunyowati, *Dampak Kegiatan IUU-fishing di Indonesia,* the article was delivered in a national seminar on the topic “Peran dan Upaya Penegak Hukum dan Pemangku Kepentingan Dalam Penanganan dan Pemberantasan IUU Fishing di Wilayah Perbatasan Indonesia”. Partnership of the Ministry of Foreign Affair, Republic of Indonesia with Airlangga University, Surabaya, 22 September 2014
Indonesian fisheries. The loss affects the state and threatens the sustainability of marine and fishery resources. Some of the factors causing illegal fishing are:

i. **The rising of Global Fisheries Consumption level**
   Fish contains a very large source of protein and does not contain too much harmful fats for human body, therefore, fish are very much hunted by consumers both in Indonesia and in the world. Data that the researcher obtained from WALHI states that in the last 5 years, national fish consumption is soaring to more than 1.2 million tons as Indonesia's population grows 1.34% per year. So the percentage of increase in the value of national fishery imports was 12.51% (2004-2005), well below the average value of fishery exports for only as much as 1.6%. A fact that shows the increasing consumption of fish in Indonesian society today with the pattern of rising fish consumption that has reached the range of 26 kg/capita/year. While the increase level of world’s fish consumption, as predicted by FAO, will continue to rise. This fact is based on global population growth (1.8% per year) and an increase in global fish consumption which has reached 19 kg/capita/year. It is undeniable, that over the next 8 years there will be an increase of fish and fishery products by 50 million tons.

ii. **Fish Resources in Other Countries decreases**
   Rapid technological developments over the past few decades have contributed to the international fish supply in the international sea as the advanced technology used by fishermen has largely increased the number of fish catches, hence the fish production is depleted due to uneven balance between capture and breeding. The 2007 Food and Agriculture Organization (FAO) publication shows that about 52 percent of the world's marine fish stocks have experienced full exploitation. It means that about 52 percent of the world's marine fish stocks are closed for further exploitation. In addition, the FAO report also states that about 17 percent of the world's fisheries have been overexploited. Even in November 2006, in an issue of journal Science, says that if the exploitation of fish resources is remain the same to the current pattern, then it is expected that the world's commercial fisheries will "collapse" by 2050.

iii. **Indonesian fishery fleet is still weak in terms of technology**
Indonesian fishery fleet is said to be weak due to the government's lack of attention to the fishermen as the main actors in the fishing fleet. Until now, the fishing boat fleet is still dominated by small-scale fleets (<30 GT), which is about 99.04 percent. Meanwhile, approximately 45.5 percent of the small-scale fleet is a fleet of boats without a motor engine, very weak, and left far behind from foreign fishermen who use large ships with the ability to catch fishes in large numbers. In addition, through the VMS, monitoring efforts on fishing activities were conducted through patrols at sea, through the Monitoring, Controlling, and Surveillance (MCS) system, and in the form of development of Community Monitoring System (SISWASMAS). MCS is conducted through routine patrols by the Office of Marine and Fishery, as well as integrated operations with all law enforcement elements at sea such as Indonesian Marine, Waters Police, and Air Force, and involving community monitoring group (Pokwasmas).

From the FAO report, of the 54 studied countries, the loss of illegal, unreported, and unregulated (IUU) fishing practices is estimated at 11 million-26 million tons of fish which worth 10 billion to 23 billion US dollars. The number of unreported fish from Indonesia is estimated at 1.5 million tons per year. There is no exact figure of the value of loss due to IUU practice in Indonesia. It is estimated that the loss is more than Rp 100 trillion per year.

iv. The Lack of monitoring by authorities in Indonesia’s sea

According to the Director General of Supervision and Control of Marine Resources and Fisheries from the Office of Marine and Fishery who claims that VMS can overcome about 50 percent problem of illegal fishing system. However, the implementation of VMS has not been optimal because of the lack of response from the owners of fishing vessels, which is the main target of VMS installation. In 2010, there are 1,339 newly installed units of transmitter from the additional capacity of 3,055 units, so there are still 1,716 units of ships that have not installed with a transmitter.

v. Weak Law Enforcement in the Indonesian Ocean

Many impacts arise from illegal fishing practices that not only harm the state economically with the loss of trillions of rupiah, but also destroys the fishermen's
economy, and are often referred to as the trigger of conflict or tension of diplomatic relations among nations, especially with regard to bilateral relations between adjacent and neighboring countries. Negative impacts of illegal fishing can also be found in environmental and ecological contexts. Government’s policies related to fishing should comply with the rules and criteria of Fishing Permit, the establishment of fishing ground, the type of consumption fish, the capacity of catches in accordance with the type of vessel and the total allowable catch, and the fishing equipment.

vi. **Indonesian sea is very large and all open**

The vastness of the sea area that became the jurisdiction of Indonesia and the fact of Indonesian ZEE which is widely exposed and adjacent to the open sea, has become an attraction for the entry of foreign and local fishing boats to conduct illegal fishing.

In 2014, as many as 78 foreign fishing vessels are seized for conducting illegal fishing in Indonesian ZEE waters, especially in Natuna and Anambas waters. Illegal fishing makes the Anambas community, which 90% working as fishermen, to be eliminated. Many modes are applied in illegal fishing, but some mode/type of illegal activities are frequently used, among others: unlicensed fishing, licensed but violate the provisions of law, fraud/manipulation of documents, transshipment at sea, deactivating the transmitters (partially for ships that required to install transmitters), and destructive fishing using chemicals, biological materials, explosives, tools and/or modes, and/or constructions that endanger the preservation of fish resources. In detail, the impact of illegal fishing crimes are:

1) **Damaging the Sustainability of Fish in the Sea**

Head of Research and Development Department from the Ministry of Marine Affairs and Fisheries, Zulficar Mochtar, explains that globally fishery sector has 85% experienced over exploitation. So he said, if non anticipation action is taken, then fisheries in the territory of the Republic of Indonesia will also be threatened. As many as thousands of foreign ships

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have illegally exploited fishes in Indonesia by duplicating fishing license in Indonesia. The data recorded 7,000-10,000 foreign ships loot fishes in Indonesia every year.

2) Become a detriment to the State’s economy

Indonesia's losses due to illegal fishing, or illegal fishing practices are considerable. The data from Food and Agricultural Organization or FAO noted, Indonesia's losses Rp 30 trillion per year due to illegal fishing. The data was assessed by the Minister of Marine Affairs and Fisheries, Susi Pudjiastuti, as quite small. According to the calculations, due to illegal fishing, the state losses per year could reach US $ 20 billion or Rp 240 trillion.15

3) Social Affairs

For Indonesia, IUU Fishing is a main concern because it happens every day in Indonesian waters. In Southeast Asia, fisheries sector is one of the main sources of food sustainability in the region. Economic motives often serve as the reason for the massive exploration of fishery resources, which in turn, make it a major cause for drastic reduction of fish stocks in Southeast Asia. This problem will adversely affect the survival of more than 100 million people. This has also led to disputes among local fishermen with trawler owners and also among traditional fishermen between countries.

The decline in fish stocks in Indonesian waters as a result of illegal fishing by trawlers has also forced Indonesian traditional fishermen to engage in illegal fishing activities in the Australian waters, causing problems between the two countries. The direct impact is not only felt by the fishermen, but also the employees of factory, especially the fish processing factories. In Tual and Bejina, for example, since the operation of foreign fishing vessels, the entire fish processing industry does no longer operate, and further consequence can be guessed on what happens, namely the layoffs (Termination of Employment) to the employees of fish processing factory. Since there is no more fish to be caught as the raw material for processing by the company. It is because all of the fish catches by foreign vessels is transferred to a larger vessels in the middle of the sea, the term is 'trans-shipment', and it clearly violates the Regulation of Minister of Marine Affairs and Fisheries no. 16 Year 2006 which requires all fish catches to be lowered and processed in land.

4) Environmental Damage

In terms of environment, permanent damage has occurred, causing ecosystems and marine biota to be disturbed, due to the use of large scale fishing gear (Pukat Harimau and Trawl) which is not in accordance with our maritime requirements and circumstances. And what is certain is the depletion of fish resources in Arafuru waters, because almost 3 years there are massive fishing activities which are arbitrarily and exploitative.

5) Illegal Fishing violates Indonesian sovereignty

From the majority of illegal fishing cases occurring in Indonesia, the violation of Indonesian sovereignty is committed by all illegal fishing actors of the above mentioned countries. The foreign fishermen have violated the territorial borders of Indonesian sovereignty without permission, entered Indonesian seas and robbed Indonesian fishery assets. The assertiveness of Indonesian law enforcement officers should be upheld in keeping Indonesia's sovereignty to prevent the breach of boundary by countries who intent on robbing the national’s assets. Because such action is one form of criminal acts that occur in Indonesian waters.

Ministerial Decree No. KEP/50/MEN/2012 is a form of application of the Code of Conduct for Responsible Fisheries (CCRF) agreed in 1995 by the Food and Agriculture Organization (FAO) countries on the management and development of an orderly, responsible, and sustainable fishery, and as a form of implementation of international action to combat IUU Fishing as outlined in the International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing (IPOA-IUU Fishing) in 2001. IPOA-IUU Fishing should be followed up by every country, including Indonesia, by preparing action plans for the prevention and control of IUU Fishing at national level.

Indonesian Government’s policy of explicitly sink foreign vessels that commit illegal fishing in Indonesian Waters Territory (IWT) has received many responses from many parties. This policy is supported by some circles as a form of assertiveness by the Government of Indonesia in maintaining the sovereignty of the nation. For example, from the Minister of Foreign Affairs, Retno Marsudi, who said that this decisive action should be done as an effort by the state to conduct law enforcement without being bargained, further stating that this action is a starting point for Indonesia to be respected by other nations.\(^{16}\) It is also supported by the Minister of Marine Affairs and Fisheries, Susi Pudjiastuti, who stressed that the sovereignty of the state is a thing that must

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\(^{16}\) Sukmana, Y. (2014, November 27). *Susi: Sudah Ada Instruksi Presiden untuk Tenggelamkan Kapal*
be maintained in any required ways. However, some parties also doubt whether such decisive actions could be undertaken by the Government of Indonesia which has been inclined to be gentle on border conflicts. It is understandable, recognizing that the sunken ships so far were small vessels only.

Actually, the special action of sinking foreign vessels by Indonesian Government is not a new issue. This can be seen from the regulation concerning that action which has been listed since 2009 in the Law concerning Fisheries (Law of the Republic of Indonesia Number 45 Year 2009 on Fisheries, 2009) where Article 69 paragraph 4 of the Act states that;

“... penyidik dan/atau pengawas perikanan dapat melakukan tindakan khusus berupa pembakaran dan/atau penenggelaman kapal perikanan yang berbendera asing berdasarkan bukti permulaan yang cukup.” (... a fishery investigator and / or supervisor may take special action in the form of burning and / or sinking a foreign flagged fishing vessel on the basis of sufficient preliminary evidence)

The implementation of this regulation has been applied by Indonesian Navy. This was confirmed by the Head of Strategic Intelligence Agency for the period of 2011-2013, Rear Admiral (Ret.) Soleman B. Ponto. The actions taken by Indonesian Government to drown the illegal foreign vessels are part of efforts to improve the deterrence or repellent effect of regional offenses that could harm and threaten the sovereignty of the state. Although the regulation on sinking vessel action has been in place since 2009, the socialization of the regulation had been under-done by the government, both to the internal and external parties through Indonesian embassies in many countries, especially those bordering with Indonesia. That is what causes many foreign fishermen who still violate the territory of Indonesia, because they do not feel threatened, since they are

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unaware of the firm action against the committed violations. On the other hand, if the regulation is implemented without sufficient socialization, it is worried that it will disrupt Indonesia's diplomatic relations with countries whose fishermen commit violations.

Illegal fishing activities can be categorized into three groups:

1. Illegal fishing, which is an illegal fishing activity in the territorial waters or ZEE of a country, or has no license from that country;
2. Unregulated fishing, means a fishing activity in the territorial waters or ZEE of a country that does not comply with applicable rules in that country; and
3. Unreported fishing, which is an illegal fishing activity in the territorial waters or ZEE of a country which is not reported, either the operational or the ship data and its catches.

In practice, the involvement of foreign parties in the theft of fish can be classified into two, namely as follows:

First, semi-legal theft, namely the theft of fish by foreign vessels by utilizing legal fishing licenses owned by local businessmen, using vessel with local flags or flags of other countries. This practice is still categorized as illegal fishing, because in addition to catch fish in the territorial waters which are not their rights, illegal fishing perpetrators are also rarely directly send the catch without going through the process of landing fish in a legitimate territory. This practice is often referred to as the "Flag of Convenience" (FOC) practice.

Secondly, pure illegal theft is a process of fishing by foreign fishermen and foreign ships using their own flag to catch fish in our region. This activity is quite large, based on the estimation of FAO (2008), there are about 1 million tons per year, with the number of ships about 3000 ships. The ships come from Thailand, Vietnam, Malaysia, China, Philippines, Taiwan, South Korea, and others.

Law No. 31/2004 which is updated with Law No. 45/2009 on Fisheries mentions, the action of fish theft is classified as a criminal act. The penalty applies not only to the on board operator, but also to ensnare the owners of the ships and the owners of the company (Article 8). The foreign ship of fish thieves may also be burned and drowned (Article 69), even pay a fine of up to Rp. 20 billion (Article 93). The legal basis for the drowning of foreign fishing vessels is also very clear
in Article 69 paragraph (4) of Law no. 45 Year 2009 concerning Fisheries which reads, "in the case of carrying out the supervisory functions, the investigator and the fishery supervisor may perform special actions in the form of burning and/or sinking of foreign flagged fishing vessels on the basis of sufficient preliminary evidence".

Regarding sovereignty, even though Indonesia as a sovereign state is entitled to a total rights to secure its national interests, in this case is monitoring the territorial boundaries to secure existing marine resources, the implementation of such regulation will be difficult if Indonesia has a bilateral agreement with a particular country. For example, Indonesia has a Memorandum of Understanding (MoU) agreement with Malaysia on the treatment of fishermen, agreed in Bali, January 27, 2012. Regarding the violation of the territory by the fishermen. Each country agrees on a precautionary measure with the details set forth in Article 3 Point B as follows:¹⁹

- Inspection and request to leave the area shall be conducted promptly towards all fishing boats, except for those using illegal fishing gears, such as explosives, electrical and chemical fishing gears;

- Notification on the inspection and request to leave the area shall be reported promptly to Focal Points; and

- Conducting an open and direct communication among the maritime law enforcement agencies of the Parties promptly and expeditiously.

This is contrary to the Law No.45 Year 2009 owned by the Government of Indonesia. On the one hand, the law requires strict action, but the rules of the MoU put forward more persuasive efforts. The conflict in the regulation is one of the reasons why Indonesian government raised the issue of firm action against foreign fishermen into national and international scope. It is part of the Indonesian government's diplomacy strategy to reduce territorial violations by foreign fishermen. Indonesian government prefers not to take risks by changing the bilateral agreement because it will affect the relations between the two countries. Therefore, the current issue is directed more directly to the perpetrators of violations to provide psychological effects by spreading fear through

the threat of burning and sinking the ships. This is what then causes deterrence effects. Furthermore, the deterrence effect can be interpreted as an attempt to influence the judgment of others on its importance which in its application is possible to use provocative strategies in accordance with the existing conditions.\(^\text{20}\) This method will certainly be much safer than make the Government of Indonesia to instantly sign a deal with the government of the concerned countries that could adversely affect diplomatic relations between the countries.

**B. the Effectiveness of Sinking Vessel Policy**

The sinking of foreign vessels that conduct fish theft in the territory of Indonesia itself is not new in the era of President Joko Widodo. This practice is a common thing conducted in the world, as an effort to overcome illegal fishing.\(^\text{21}\) In February 2014, Indonesian fishermen's vessels that were caught entering Papua New Guinea's sea territory were also burned by the country's marine patrol. The head of Indonesian Navy's Information Service, First Admiral Manahan Simorangkir, said that the attempt to sink the illegal vessels was not the first time that the Navy had ever done. The Navy has at least four times in sinking foreign vessels that stole fish in the waters of the archipelago, which occurred in 2003. Throughout 2003, the Navy had sunk four illegal foreign vessels with Philippine flags and 4 illegal foreign vessels with Thailand flag. Meanwhile, the Director General of Marine and Fishery Resources Control, Asep Burhanudin, also stated that the drowning of foreign vessels that conducted fish theft in Indonesian marine areas has often been done since the administration of President SBY. He stated that in the period of 2007 – 2012, there are 38 foreign ships that have been drowned. Asep details, since 2007-2012, there are 38 ships that have been drowned. In details, 1 ship was sunk in 2007, 32 ships in 2009, 3 ships in 2010, 1 ship in 2011, and 1 vessel in 2012. All of the vessels were captured by the Natuna Sea Fisheries Management Area. The majority of the captured and drowned vessels are from Vietnam.\(^\text{22}\)


\(^\text{21}\) Illegal fishing is a fishing activity that is not in accordance with the rules of legislation, has no permission, using false documents, over capacity of fish catch, using illicit tools, not reporting the catch, and destroying the marine ecosystem.

Many strategic points within Indonesian archipelago can be used as illegal fishing spot, namely: North Sumatra Sea, Riau Islands, West Kalimantan, Maluku, North Sulawesi, and North Halmahera Papua. Other locations selected in Indonesia are: Natuna Sea, Karimata Strait, Banda Sea, Sulawesi Sea, Arafuru Sea, Maluku Sea, and Seram Sea. The location of the spots was chosen because, in addition to having a wealth of marine resources, there are also abundant lack of supervision from authorities and other surveillance equipments, so that the foreign ships who conduct illegal fishing actions can freely take the sea wealth in the area. Illegal Fishing perpetrators, viewed from the perspective of arrest operations, can be classified into two groups namely the Indonesian ship, and foreign ships or ex-foreign ships originating from various countries, which mostly were the neighboring countries. Foreign ships do have a more modern technology than Indonesian ships, a larger capacity of catch, and wider net machine.

As a coastal state, certainly Indonesia has the authority to protect its territorial waters, especially the natural resources that contained therein. The position of Indonesian waters in Indian Ocean has several choke points, such as the Strait of Hormuz, the Strait of Malacca, the Strait of Lombok, the Sunda Strait, and the large extent of Indonesian waters, but not supported by adequate infrastructure and resources in every open water region to the remote areas, and in the border areas of neighboring countries, hence frequently the perpetrators of illegal fishing can easily penetrate the sovereignty of Indonesia. Due to the privileges of international routes contained in the territorial waters of Indonesia, indirectly, the aspect of sovereignty which is the essential property of a state as its ultimate power, the state has a monopoly of power within its boundaries, in which a current nature of public and state organization cannot justify the individual that taking such disservice. Therefore, in an effort to overcome the violation of sovereignty or illegal fishing crime acts, it should be done a real action in the form of submerging the foreign ship.

In combating the problem of illegal fishing in Indonesia and law enforcement efforts at sea, Indonesian government has passed fishery law no. 31 Year 2004 Jo Law no. 45 Year 2009 on Fisheries. Yet, it needs to be understood that law enforcement is different from marine law enforcement at sea. Some opinions explain:

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23 Gatot Supramono, 2011, Hukum Acara Pidana dan Hukum Pidana di Bidang Perikanan, Jakarta, Rineka Cipta, pg. 219
1. In the sea, there are two conflicting interests, namely the interests of national and international law. While on land only accommodates national interest only.

2. Law enforcement at sea is based on different legal regime, while on land does not recognize differences of legal regime.

3. In the sea, the subject of law is person (Indonesian citizen or foreigner) and the state embodied with the flag of the ship, while on land, the subject of law is only person.

4. Provisions of national and international law, granting law enforcement authority towards warships against maritime security breaches

In terms of law enforcement, including law enforcement for Illegal Fishing perpetrators, UNCLOS 1982 outlines marine region into two categories, namely the seas under the sovereignty of a coastal state and the marine territory in which a country has the jurisdiction of a coastal state. Marine areas that become subject to the sovereignty of a coastal / archipelagic state are inland waters and territorial sea or archipelagic waters and territorial waters. While the marine areas where a coastal/archipelagic state has sovereign rights and jurisdiction are the Exclusive Economic Zone (ZEE) and Continental Shelf.

The ZEE region has a sui generis legal status (unique / different). The uniqueness lies in the existence of rights and obligations of coastal states and other countries over ZEE. Unlike in the territorial sea, where coastal states have sovereignty, in ZEE coastal states have only sovereign rights. Such sovereign rights are limited to the exploration and exploitation of marine resources, both biological and non-biological resources.

UNCLOS 1982 does not govern the IUU Fishing. The discourse on illegal fishing came together in the framework of IUU (Illegal, Unreported, and Unregulated) fishing practices during the CCAMLR (Commission for Conservation of Antarctic Marine Living Resources) forum held

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24 Sovereignty is the highest authority that a country can perform to exercise its power over a territory and/or its people. In the case of exercising its sovereignty, a country does not need to ask for 'permission' to other countries to exercise its power. This sovereignty, when associated with the geographical conditions of Indonesia, includes land, inland waters (internal waters), archipelagic waters, and territorial sea.

While Sovereign Right is the authority of a country to a certain region where its implementation must be subject to the rule of law applicable to the international community. What this means is, Sovereign Right of a country must be a consensus and receive approval from another country. Sovereign rights generally govern the use of natural and/or marine resources in certain areas which not covered by the territory of the State's sovereignty.

25 UNCLOS 1982 article 77
IUU Fishing practice took place both in the region of sea that is subject to sovereignty, as well as in ZEE, that conducted by the vessel of the concerned coastal state itself or by a foreign flag ship. Although it does not regulate IUU Fishing, but relates to law enforcement at sea, UNCLOS 1982 regulates, in general, both in marine areas subject to the sovereignty and ZEE of a state.

If a violation of the coastal state legislation takes place in the territorial sea or inland waters or in an archipelagic waters of a country, then in accordance with the sovereignty granted by Article 2 of UNCLOS 1982, the coastal state may enact all its laws and even its criminal law, against the vessel. Provided that the violation has an impact on the coastal state or disrupts the security of the coastal state as defined in Article 27 (1) of UNCLOS 1982, which reads:

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

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

However, if the elements mentioned in Article 27 (1) UNCLOS 1982 are not met, the coastal state can not apply its criminal jurisdiction to the vessel. The extent of the authority of the coastal State to enforce its law for unlawful foreign ships in territorial waters, inland waters, or in its archipelagic waters (fulfill the provisions of article 27, paragraph 1), is the embodiment of territorial jurisdiction.

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26 http://rokhmindahuri.info/2012/10/04/selamatkan-indonesia-dari-iuu-fishing/, accessed on 12 July 2017
Article 27 (5) UNCLOS 1982 further refers to Chapter IX (Conservation and Protection of the Marine Environment) and Chapter V on ZEE. In the case of violations of coastal state’s laws relating to exploration, exploitation, conservation, and management of fisheries resources, the coastal State may enforce its law. In relation to coastal state law enforcement in ZEE, is regulated in article 73 of UNCLOS 1982 which says:

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

Under Article 73 of UNCLOS 1982, if a foreign ship fails to comply with the coastal state fishery legislation in ZEE, the coastal state may board, inspect, arrest, and conduct litigation of the vessel, and notify the state of the vessel flag. However, the vessel and its captured crew shall immediately be released with reasonable bonds provided to the coastal state. The imposed penalty shall not be in the form of physical punishment, for instance, imprisonment. Thus, the law and the form of punishment for the ship and its crew are different if it occurs in the sea area that is subject to sovereignty with that in ZEE. The authority of the coastal State against violations in ZEE is limited only to enforce the laws relating to fisheries. This difference is because in ZEE, the coastal state only has sovereign rights rather than sovereignty. Therefore, it is limited with matters relating to sovereign rights owned by the coastal State or the archipelagic State. The provision of article 73 (2) requires the coastal State to immediately release the captured vessel and its crew after being
given a proper security deposit or other form of security. The release procedure is immediately set forth in Article 292. The immediate release procedure of its retained ship and its crew is an innovation in international maritime law. However, while Article 292 Paragraph (1) requires that the security deposit or other financial security be "reasonable", UNCLOS 1982 does not provide details about the "feasibility" of the financial security.

In combating the problem of illegal fishing in Indonesia and law enforcement efforts at sea, Indonesian government has passed a fishery law no. 31 Year 2004 Jo Law no. 45 Year 2009 on Fisheries. In this fishery law, the sanctions given to the perpetrators of illegal fishing are quite heavy. An example is the obligation of each fishing vessel to have a fishing license, and for an Indonesian-flagged vessel violating such provisions, the operator and the owner of the vessel may be subject to a six year criminal penalty and a fine of Rp. 2 billion. If the violation is done by a foreign-flagged vessel, the operator and the owner of the vessel are in jail for six years and due to a fine of Rp 20 billion. The judge must also have passed the decision within 30 days from the date of receipt of the submission of the case file from public prosecutor. The same period of time also applies to high court judges and the Supreme Court in deciding the request for Appeals and Cassation.

With this ad-hoc court, it is expected that the value of salvaged fish can increase while helping to reduce the damage of foreign vessels to be confiscated, which can be donated to national

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27 1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.

28 It is regulated in Article 80 paragraph (1) of Law on Fisheries which states ; "Dalam jangka waktu paling lama 30 (tiga puluh) hari terhitung sejak tanggal penerimaan pelimpahan perkara dari penuntut unum, hakim harus sudah menunjuk putusan" (Within a maximum period of 30 (thirty) days from the date of receipt of the matter delegation from the public prosecutor, the judge shall have already rendered the verdict).
fishermen. The existence of a fishery law is expected to bring positive results in law enforcement at sea. In combating illegal fishing, the government of the Republic of Indonesia has also taken concrete actions to protect its marine potential. The action is to establish the Coordinating Ministry for the Ministry of Marine Affairs and Fisheries. This Ministry has shown that Indonesian sovereignty cannot be contested by taking decisive action to sink foreign fishing ships proven to illegal fishing in Indonesian waters.

In the implementation of supervision and guard of Indonesian maritime security, Fishery Supervisory Boat is performing supervision and law enforcement in fishery field within fishery management area of Republic of Indonesia. The fishery supervisor performs its functions in accordance with Law no. 45 year 2009 on Fisheries, especially Article 69, which reads:

1. *Kapal pengawas perikanan berfungsi melaksanakan pengawasan dan penegakan hukum di bidang perikanan dalam wilayah pengelolaan perikanan Negara Republik Indonesia.* (Fishery supervisor boat has a function to conduct supervision and law enforcement in the field of fishery in fishery management territory of the Republic of Indonesia)

2. *Kapal pengawas perikanan sebagaimana dimaksud pada ayat (1), dapat dilengkapi dengan senjata api.* (Fishery supervisor boat as referred in paragraph (1) may be equipped with firearms)

3. *Kapal pengawas perikanan dapat menghentikan, memeriksa, membawa, dan menahan kapal yang diduga atau patut diduga melakukan pelanggaran wilayah pengelolaan perikanan Negara Republik Indonesia ke pelabuhan terdekat untuk pemrosesan lebih lanjut.* (Fishery supervisor boats may hold, inspect, carry, and seize vessels suspected or reasonably suspected of violating the territorial fisheries management territory of the Republic of Indonesia to the nearest port for further processing)

4. *Dalam melaksanakan fungsi sebagaimana dimaksud pada ayat (1) penyidikan/atau pengawas perikanan laut dapat melakukan tindakan khusus berupa pembekaran dan/atau penenggelaman kapal perikanan yang berbendera asing berdasarkan bukti permulaan yang cukup.* (In carrying out the functions referred to in paragraph (1), the investigation / or supervisor of the marine fishery may take special action in the form
of combusting and / or sinking the foreign-flagged fishing vessel on the basis of sufficient preliminary evidence)

In carrying out the function, the fishery investigator and / or supervisor may take special action in the form of burning and / or drowning the foreign-flagged fishing vessel based on "sufficient preliminary evidence" in accordance with the mandate of Law 45/2009. This "sufficient preliminary evidence" is a preliminary evidence to suspect a criminal offense in the field of fisheries by a foreign-flagged fishing vessel, for example a foreign-flagged fishing vessel who has no fishing license, and clearly capturing and / or transporting fish when it enters the area of fisheries management of the Republic of Indonesia. "sufficient preliminary evidence" in law enforcement efforts is just entering the preliminary examination stage or still in search of and finding the truth. The word "sufficient preliminary evidence" is contained in article 17 of the Criminal Procedure Code where it says that "sufficient initial evidence" forms the basis for arresting someone suspected of committing a crime.

Thus "sufficient preliminary evidence" is a preliminary evidence for suspicion of a criminal offense. This provision indicates that arrest warrants can not be arbitrarily executed, but are addressed to those who actually commit a crime. Whereas "sufficient preliminary evidence" according to the explanation of the Fisheries Act is an initial proof to suspect a fishery crime committed by a foreign vessel in which the foreign vessel is clearly capturing and or transporting fish in the Territorial Waters and Fisheries of the Republic of Indonesia (TWFRI) without permission. Furthermore, in the explanation of the article, also stated that the action is only done if the investigator and/or fishery supervisor believe that the foreign vessels really have committed a fishery crime. Such a thing is very understandable because an investigator, in carrying out his duties, has a guideline or rule of law that must be obeyed. The guideline is in the form of applicable legislation to regulate what and how an investigator performs the tasks in investigation

The sinking vessel policy, aimed at demonstrating the firmness and dignity of Indonesian government in protecting its territory and natural resources, protecting its sovereignty, has a deterrent effect, and securing the sea from looting by foreigners, as well as a concrete action in an attempt to translate the vision of being a central maritime axis which intensified by the government in the past year, especially with regard to full sovereignty at sea. The Government of Indonesia
has stated explicitly to combat illegal fishing in the fishery management territory of the Republic of Indonesia.

**Conclusion**

From the description of the analysis and discussion based on the theoretical basis above it can be concluded two things in accordance with the raised issues, as follows:

1. That the policy of sinking a foreign-flagged vessel in IUU fishing is part of an effort to increase the deterrence or repellent effect of regional offenses that could harm and threaten the sovereignty of the state. Although the regulations on sinking ship action have been in place since 2009, the socialization of the regulation has been under-done by the government both at home and abroad through Indonesian embassies in countries, especially those bordering Indonesia.

2. Whereas the Indonesian Government's policy of sinking a foreign-flagged vessels who are conducting IUU fishing is regulated in Law Number 45 Year 2009 concerning Fisheries, and internationally allowed with certain restrictions on the provisions of Article 73 paragraph (3) of UNCLOS

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