

## Conference Paper

# Review of Law Enforcement against Illegal Fishing in Indonesia's Exclusive Economic Zone

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### Abstract

This article discusses the law enforcement against illegal fishing by foreign-flagged vessels in Indonesia's exclusive economic zone. Because the criminal sanctions in the form of fines are very low and there is no threat of imprisonment, the current laws carry little weight with illegal fishermen. This study makes the case for increasing the fines substantially to act as a deterrent. Using the established legal method (involving a statute approach and a conceptual approach), this study makes the case for increasing the fines substantially to act as a deterrent.

**Keywords:** Criminal; Sanctions; Illegal Fishing.

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## 1. Introduction

Most of the territory of Indonesia is a water area (sea) which consists of thousands of islands, both large and small, lining from Sabang to Merauke. The geographic location of Indonesia provides its own advantages whether it is not necessary to be active in international forums in the maritime sector, including regarding the law of the sea. Such conditions are inseparable from the interests of the Indonesian people in the fields of Politics, Economy, Social, Culture, Defense and Security.

To regulate international territorial waters through the law of the sea continues to develop, starting with the declaration of the law of the sea which has been issued, such as the Montevideo Declaration on the law of the sea in 1970 and several declarations made by countries in Latin America related to the law of the sea. The signing took place in August in the city of Lima, the capital of Peru. In the signed declaration, it is emphasized that, geographically, economically, and socially, has a close relationship between land and people who live on land, and is justified by giving priority to residents or residents who occupy the area with the aim of exploiting the land wealth and natural

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marine resources close to the coastal area surrounding the islands of Indonesia is a part of Indonesian life

The area of marine waters or Indonesian waters is part of the Exclusive Economic Zone (EEZ), covering an area of 200 miles from the coastline. Within the sea zone, that the existence of a coastal state is given rights to the wealth or natural resources contained therein, and is given the right to utilize and issue legal policies, is also given freedom for navigation activities, conducts flight activities on its territory and carries out planting activities cables and pipes under the sea for the benefit of the nation and state. The concept of the Exclusive Economic Zone arises from the existence of urgent needs and conditions.

The basic conception of EEZ has been pioneered for the first time by the Kenyan state at the Asian-African Legal Constitutive Committee conference held in January 1971, as well as at the United Nations Sea Bed Committee activities held in 1972. The concept proposed by the state Kenya at the conference received welcome or active support from both Asian and African countries. At the same time, several Latin American countries began to develop using the concept conveyed by Asian and African countries towards the patrimonial sea. Both of these have effectively existed since the existence of UNCLOS, as well as the new concept that has been initiated, namely the application of the EEZ. (Likadja, Frans E. (1998). Bunga Rampai International Maritime Law, Bina Cipta, Bandung. p. 58)

The main provisions in the Law of the Sea Convention on EEZ are contained in the 5th part of the Convention on the Law of the Sea. Since 1976, that the idea of an EEZ has been enthusiastically accepted by the majority of countries that are members of UNCLOS, UNCLOS member countries have universally recognized the existence of the EEZ without having to wait for UNCLOS to be ratified or to impose a convention, it has been universally established that the EEZ region which has an area of 200 miles.

The definition of sovereignty is the highest power, absolute, and no other agency can equalize or control it, which can regulate citizens and also regulate what is the goal of a country and regulate various aspects of government, and take various actions in a country, including but not limited to the power to make laws, implement and enforce laws, punish people, collect taxes, create peace and declare war, sign and enforce treaties and so on.

Then in the concept of sovereignty also contains the principle of authority (power) which means a freedom (liberty), power (authority), or ability (ability) owned by a person or an entity to take a legal action that can produce an effect, strength, coercion, domination, and control over others.

Apart from that, there is also a general theory in law which assumes that in every society in which there is law, there is always what is called a “party of sovereignty” (sovereign person). Authorities in everyday terms are often referred to as officials sovereign, both formal and non-formal officials, both at the local and national levels. It is these sovereign officials who will each design, manufacture, discover, interpret, apply and enforce laws in a country and society.

From the description of the theory of sovereignty above, it can be seen that the state cannot be separated from sovereignty, without sovereignty there is no power in a country, because sovereignty is actually the highest power for the government in regulating the survival of a country.

Therefore the rule of law in order to create a just and prosperous society is part of our national goal. And the rule of law of a country cannot be interfered with by other countries. This means that the principle of mutual respect for a country’s sovereignty is important in terms of maintaining the sovereignty of each country, both at the regional and international levels.

Based on the provisions of article 73 Unlos 1982, the coastal State in exercising sovereign rights can board ships, inspect, arrest and carry out court proceedings, as necessary to ensure compliance with laws and regulations that are established in accordance with the provisions of this Convention released after being given a proper bail. However, at this time there are legal problems in the exclusive economic zone of Indonesia outside of the exploration, exploitation and processing of natural resources, especially organized and international illegal arrests. In addition to that which can be categorized as a crime or criminal offenses are included in international crimes to determine this by analyzing the scene of the incident, the nationality of the perpetrator and the victim, objects in the form of assets belonging to foreign parties and the human values, justice and legal awareness of mankind are touched so that the perpetrators of these crimes have the right and obligation to arrest, detain, prosecute and try the perpetrators of these crimes.

As for Article 73 paragraph (2) Unclos 1982, the coastal State may be subject to court proceedings, as necessary to ensure compliance with laws and regulations that have been enacted in accordance with the provisions of this Convention. Captured ships and their crew must be released immediately after being given a security deposit or an appropriate fine.

The problems posed to examine in this study are as follows:

1. How is law enforcement against perpetrators of illegal fishing by foreign-flagged vessels in Indonesia's exclusive economic zone?
2. What are the juridical obstacles that hinder law enforcement against perpetrators of illegal fishing in Indonesia's exclusive economic zone?

## 2. Research Methods

In writing this journal, the author uses a descriptive type of research and seen from the objective of including normative legal research that studies and analyzes the laws and regulations on law enforcement in ZEEI waters both nationally and internationally relating to illegal fishing by foreign fishing vessels. In writing law, the focus of discussion is carried out on the basis of a process to find legal principles and rules that can be used to answer legal issues to be discussed. This legal review is conducted as an academic study and is closely related to efforts to contribute thoughts or ideas in dynamics of the development of legal science, especially international law through the findings of theory, law, arguments or new concepts that are in line with matters of law

The approach used in this study is a statutory and conceptual approach with the aim of being a guide and basis for analyzing problems. The legal materials used in this study are the source of primary legal materials, namely:

1. Unclos 1982
2. Law No.5 of 1983 concerning ZEEI
3. Law No.6 of 1996 concerning waters
4. Government Regulation No.15 of 1984 concerning the management of biological resources.
5. Ministerial Decree KP No.60 / September 2011 regarding fishing regulations may not exceed the permitted limits.

Sources of secondary legal materials are obtained from books, documents, research results in the form of reports in the form of theses, journals, etc. After the materials are collected, processing is carried out by clarifying the existing materials according to the problem under study, while legal materials irrelevant materials are separated so that data analysis can be focused on relevant materials. Material processing is carried out by carrying out a systemization of written legal materials by selecting legal materials, then compiling research results systematically according to the classification of legal

materials, it is carried out logically, which means that there is a relationship and linkages between one legal material and another to get an overview of the research results.

### 3. Result and Discussion

The perpetrators of illegal fishing violations in ZEEI waters for foreign vessels are subject to larger and more appropriate penalties so as not to cause major losses to the coastal State, and will provide a deterrent effect for perpetrators of illegal fishing violations against foreign vessels. Meanwhile, illegal fishing violations by the coastal State are subject to sanctions in effect in that State (Anwar, Chairul. (1998). *New Horizon of International Maritime Law*, Rhineka Cipta, Jakarta. p.36). The coastal state can only carry out the processing and utilization of living natural resources in the exclusive waters of Indonesia and can only carry out the detention process up to the court level according to the international maritime law agreement and is not allowed to carry out prison sentences, provided there is cooperation and agreement between these countries.

In the violation of fisheries crime by foreign ships in the ZEEI, which have been detained by the coastal State as soon as possible, they are released with appropriate compensation received by the coastal State. Detention is not permitted in the form of prison confinement. To support the law enforcement of illegal fishing crimes that occur in Indonesia, several laws and government regulations have been established, (E. Mantjoro and Potoh O.(1993). *International Fishier Policy (International Fisheries Policy) Alumni*, Bandung. p. 73) so that the legal umbrella used is getting stronger.

Law enforcement can be defined as the jurisdiction of a country (state jurisdiction) the meaning of this jurisdiction is:

1. Jurisdiction of legislation or jurisdiction to prescribe (authority to make legal rules to regulate various interests.
2. Jurisdiction to enforce the law (the authority to enforce the applicable legal rules”). Law enforcement authority comes from:
3. Sovereignty. Sovereignty of State the fundamental activities of a State towards people, objects, territory of the State and others for the growth of the survival of a State, sovereignty is the highest power that exists in a State
4. International law provisions. The conventional Law / Treaty is an international custom or general law principle, this is an acknowledgment by a civilized State so that the State is a subject of international law.

Some of the definitions listed above, conclusions can be drawn from the divinization of law enforcement, namely: a State activity which is based on applicable international regulations in accordance with the provisions, both Indonesian State Regulations or International Regulations, the country itself and the rules of international law, can be obeyed by every individuals and / or States that are binding in international agreements. The provisions for law enforcement in the ZEEI in the new convention on the law of the sea can be specified, namely:

a. The coastal state can carry out the processing and preservation of natural resources in the ZEEI, as well as carry out examinations according to the legal procedures applicable in that State according to the provisions of the convention, article 73 (paragraph 1) Unclos 1982.

b. The detention of the detained ship and crew must be released after the coverage is paid or other security guarantees, article 73 (paragraph 2) Unclos 1982.

c. Violation of law that applies to a coastal State in its exclusive waters does not include confinement if there is no consent of the State involved in the agreement. It is in "Article 73 (paragraph 3) Unclos 1982".

d. If there is a detention in that country, immediately report it to the representative who has committed a criminal offense in waters. What is contained in "Article 73 (paragraph 4) Unclos 1982"

Such is the purpose of the punishment that applies to the exclusive waters of the coastal State, for the next step we will review the enforcement of laws regulated in the laws and regulations in Indonesia. According to the provisions of Article 13 of Law No.5 of 1983, it is legalized in exercising sovereignty, processing and utilization of living natural resources as stated in "Article 4 paragraph (1)", by the Indonesian state legal apparatus which has the authority to determine punishment in accordance with the Law. -Act No. 8 of 1981 contained in the Criminal Procedure Law (KUHAP), except:

a. With the arrest of a foreign ship that has committed a criminal offense in ZEEI waters until the handling is at the nearest base, and can be further processed.

b. The process of criminal offense by foreign ships has a time limit not exceeding 7 days if there are other provisions.

c. In the case of the status of being detained, the violation contained in "Article 16.17 which is in the category of violation as regulated in" Article 21 paragraph (4) action b. Act No. 8 of 1981 concerning the Criminal Procedure Code.

Then it is explained that every violation committed by a ship or by any person is carried out according to the preliminary evidence that has occurred at sea for the ship

and / or each person. Indonesian citizen offenders immediately head to the nearest base on the order of the investigator to be processed immediately. Stopping ships that are regulated in statutory regulations cannot be carried out in one day at sea due to several natural factors. Stipulations regarding ship stopping have not been regulated in "Act No. 8 of 1981.

The provisions for violations committed by ships or by any person will be processed by law enforcement officials at ZEEI, namely the ship's commander or investigating officers referred to by the Commander of the Armed Forces of the Republic of Indonesia. In this case it is the prosecutor who adjudicates violations in general District Court. As for those who have the authority of the District Court whose decisions include stopping the ship and violating everyone.

Furthermore, it is decided that the request for freedom of violation of the ship and every person detained because he is accused of committing a criminal act in accordance with the law, can be carried out at any time until a sentence is issued by the District Court. From this explanation it can be decided that the compensation for the security deposit is determined according to the value of the ship, the equipment used and the catch and the amount of the maximum fine.

Handling of Juridical Constraints that hinder law enforcement by perpetrators of illegal fishing on ZEEI for foreign vessels is subject to greater and more appropriate penalties so as not to cause major losses to the coastal State, and will provide a deterrent effect for perpetrators of illegal fishing violations against foreign vessels. Meanwhile, illegal fishing violations by the coastal State are subject to sanctions in effect in that State. The coastal state can only carry out the processing and utilization of living natural resources in the exclusive waters of Indonesia and can only carry out the detention process up to the court level according to the international maritime law agreement and is not allowed to carry out prison sentences, provided there is cooperation and agreement between these countries.

We need to understand that the problem of fishing in ZEEI is a form of problem that is carried out by many actors. Which includes foreign countries that are involved in disputes over permitted fishing areas, applicable legal provisions, especially those relating to regulations, law enforcement so that there can be places and means of monitoring illegal fishing crimes. By taking into account the problems that arise from fishing in ZEEI waters that have been described above, the Coastal State has implemented several methods, including an internal strategy and an external strategy.

The internal strategy states, that the procedure and form of legalization for fishing, must be adjusted to the number of vessels fishing in the Coastal State, not exceeding the allowable limit of 80%. Especially the problem of making open authentication methods.

And the most important thing is to overcome the problem of foreign fishing vessels carrying out fishing that must comply with the legal regulations in force in a coastal State and fishing activities that must be reported and coordinated, the method that can be used is the licensing process for foreign ship owners in accordance with "Ministerial Decree No. 60 / Sept / 2011". This method has been achieved well, it is proven that the number of foreign ships that do not use a permit on the ZEEI is decreasing. This is evident from the guidance from the Maritime Affairs and Fisheries Service, which explains that prior to the issuance of the Decree, 7,000 foreign vessels committed illegal fishing in coastal countries.

Meanwhile, the exit strategy is that with the existence of a regional / international agreement between the States, the benefits obtained by the Indonesian state, namely that the coastal State can apply legal regulations in the field of fisheries, against foreign vessels fishing illegally So that from the commitments listed above, in terms of fishing, it has decreased drastically, so that it can actually eliminate violations of fisheries crime (illegal fishing) that occur during practice in the field. Based on the form of activities carried out in the field, preventive activities can be divided into:

1. Teklis Operations, namely activities or efforts to prevent and take action against perpetrators of violations directly in the field through patrol activities, confiscation of evidence, safekeeping of evidence, safeguarding ID cards, completing administration and reporting.
2. Legal operation is an action and enforcement of each person so that someone is converted or learned. Among the laws applied by the Indonesian government in overcoming criminal acts in the fisheries sector, including the Act No. 45 of 2009 in Combating Fisheries Crime in Indonesian Waters. The process of handling cases in fisheries crimes by the Indonesian Government through the Ministry of Fisheries and Maritime Affairs in coordination with the Indonesian Navy, Civil Investigators, National *Bakamla*, Police and the prosecutor's office are as follows:
  - (a) Investigation Actions Investigation is an event to obtain definite and clear information which is the beginning of a criminal act. Investigation can be carried out in an open manner as long as it can produce the information needed Investigation Actions are activities to collect accurate data so that it



- becomes clear a violation incident that occurred in order to find the suspect (article 1 point 2 of the Criminal Procedure Code).
- (b) Action Enforcement activities can be carried out in areas where breaches occur and where fish are collected and processed. The steps taken are as follows: Preparation and Implementation of Enforcement.
  - (c) Handling of Evidence. Confiscation is carried out by means of a Confiscation Order in a very urgent and necessary situation because it requires immediate action, confiscation can be carried out without the permission of the Head of the District Court but is limited to movable objects and must be notified to the authorized apparatus ("Head of the local PN").
  - (d) Summons are imposed on suspects and people who are at the scene of the crime by notifying them through a notification sent in a letter to the suspect or witness stating the reason for the summons and a brief description of the criminal act that occurred.
  - (e) Arrest. Arrests are made to the suspect and can also be carried out on the ship owner's company.
  - (f) Detention. The suspect is placed under the supervision of investigators to be continued at a further processing level.
  - (g) Search. A search is a law enforcer who carries out an overall examination of a person or place where a criminal act has occurred which has been regulated according to the provisions of the applicable law. in this law (article 32 KUHAP).<sup>11</sup>
  - (h) Examination. Examination is an activity to obtain information, assertiveness and common perceptions regarding evidence and suspects relating to the elements of the offending act so that the evidence in the crime becomes clear. Examination of Suspects and examination of Witnesses / and Expert Witnesses.
  - (i) Completion of examination results / files. Is the last stage procedure of a criminal offense, this activity consists of: Making a Resume is a series of procedures for examining the suspect and concluding a problem as well. a criminal act that occurred. Compilation of Case File Contents, namely the preparation of the contents of the case file in accordance with the sequence of actions and the grouping of letters / Minutes that have been made and attached according to evidence documents as well as other letters that need to be attached as contained in the Technical Instructions for Investigation,

filing, which is an activity to file the contents of the Case File with the arrangement and conditions for certain sealing binding, submission of the Case File, namely; which will be delegated to the prosecutor.

Imposition of penalties for perpetrators of fisheries crime in ZEEI waters, among others:

1. The coastal State may apply all the provisions of the criminal code to ships. As for this error, it causes disturbances in the security of the coastal state, in this case, processing and utilization errors. The country's living natural resources, can impose penalties in accordance with the provisions.
2. The jurisdictional rights of the marine State can carry out the management and utilization of living natural resources in the ZEEI and the water State has the authority to carry out legal proceedings up to court against foreign ships, in accordance with the provisions of applicable international law. The captured ships and their crew were immediately discharged after an appropriate transfer or some other form. Water states may not carry out detention Punishment of imprisonment, provided there is no agreement from the State that made the international treaty. The maritime State shall immediately notify the flag State vessel of the sanctions and consequences of the penalties to be imposed.
3. Water states may not carry out detention Punishment of imprisonment, provided there is no agreement from the State that made the international treaty. The water state must immediately notify the flag State's vessel of the sanctions and consequences of the penalties to be imposed or decided upon by the coastal State ("Article 73 paragraph (1) UNCLOS 1982").

Fisheries criminal acts in the ZEEI area are specifically regulated in the Fisheries Law, contained in articles 84 to 104. These criminal provisions are criminal acts outside the Criminal Code which are regulated deviantly, because the criminal acts can cause damage to the management of Indonesian fisheries which results in detriment to the community, nation and state. With high and heavy penalties as a way to overcome criminal acts in the fisheries sector. This means that the criminal sanctions applied to perpetrators of crimes in the fisheries sector in the Indonesian Exclusive Economic Zone (ZEEI) can provide a deterrent effect, so that illegal fishing can be overcome or at least reduced.

## 4. Conclusion

Fishery crime is a crime and violation of the provisions of the Law on fish management and resources in the Indonesian Fish Cultivation Territory (WPP-RI) and the most important thing is to overcome the problem of foreign fishing vessels carrying out fishing that must comply with the legal regulations in force in a coastal State and fishing activities that must be reported and coordinated.

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