

## Conference Paper

# Illegal Capture of Fish by Foreign State Ships from the Perspective of International Law

**Ferdinand Pusriansyah**

Lecturer of Politeknik Transportasi Sungai, Danau & Penyeberangan Palembang

### Abstract

The Indonesian Sea has an area of 5.8 million km<sup>2</sup>, with 17,480 islands offering a coastline of 95,181 km<sup>2</sup>, with has a large and diverse fishery potential. The economic potential of fisheries offers a substantial and significant sustainable base for national development. However, there are a number of irresponsible parties who take Indonesian marine products illegally. The implementation of Act No. 45 of 2009 concerning Fisheries is a positive step and is a basis or rule in deciding legal issues related to illegal fishing. The Fisheries Law adopts several provisions of international law on maritime affairs, one of which is the 1982 United Convention on the Law of the Sea (UNCLOS) and Indonesia has ratified the UNCLOS through Act No. 17 of 1985. The government through the Ministry of Marine Affairs and Fisheries (KKP) issued several policies to prevent illegal fishing practices, including Improving Facilities and Infrastructure, Supervision of Law Enforcement in the Fisheries Sector, Establishing a Task Force to Eradicate Illegal Fishing.

**Keywords:** Foreign Ships; Illegal Fishing; International Law.

Corresponding Author:  
 Ferdinand Pusriansyah  
 ferdi.p82@gmail.com

Published: 12 January 2021

Publishing services provided by  
**Knowledge E**

© Ferdinand Pusriansyah. This article is distributed under the terms of the [Creative Commons Attribution License](#), which permits unrestricted use and redistribution provided that the original author and source are credited.

Selection and Peer-review under the responsibility of the IWPOSPA Conference Committee.

## 1. Introduction

The sea is a water space on the face of the earth that connects land to land and other natural forms. Geographical and ecological unity along with all related elements, as a system governed by national and international statutory provisions which aim to make it an economic dynamic dimension requiring exploitation. Therefore, the marine wealth is transformed into natural resources, and then from the natural resources exploited it becomes one of the capital for the welfare and prosperity of the people as well as for national development in realizing national ideals (Abdul Qodir Jaelani, "The Political Law of the Constitutional Court Decision Number 36 / PUU-).

Indonesia is an archipelagic country, most of whose territory consists of a very large area of water (sea) and geographically is the largest archipelago country in the world. The Indonesian Sea has an area of 5.8 million km<sup>2</sup> consisting of; territorial sea with an area of 0.8 million km<sup>2</sup>, the archipelago sea of 2.3 million km<sup>2</sup>, and EEZ of 2.7 million

 **OPEN ACCESS**

km<sup>2</sup>, and has 17,480 islands with a coastline of 95,181 km<sup>2</sup>, and has a very large and diverse fishery potential. The potential of fisheries is an economic potential that can be utilized for the future of the nation as the basis for national development. However, there are still responsible parties who take Indonesian marine products illegally or commonly referred to as illegal fishing.

The rise of illegal fishing activities that occur in Indonesian seas is increasingly worrying, based on data from the World Food Agency or FAO, recording Indonesia's annual losses resulting from illegal fishing amounting to IDR 30 trillion. This number is considered quite small by the Minister of Marine Affairs and Fisheries, Susi Pudjiastuti. According to Susi, state losses resulting from illegal fishing per year can actually reach more than US \$ 20 billion or around IDR. 300 trillion, so that over the past ten years, the total state losses have reached IDR. 3,000 trillion. One of the losses is the result of the large number of illegal foreign vessels fishing in Indonesia, the number of licensed foreign vessels is around more than 1,000 units and those without licenses are around 3-5 times that. The number of catches of one ship reaches 600-800 tons per year (Susi: "Illegal Fishing" Costs the State IDR. 300 Trillion Per Year", <http://finance.detik.com/read/2014/12/01/152125/2764211/4/menteri-susi-kerugian-akhibat-illegalfishing-rp-240trillion>, accessed on 20 March 2018).

Illegal fishing is fishing that is carried out illegally by foreigners or by Indonesian citizens themselves. These actions were carried out in various ways that were not in accordance with Act No. 31 of 2004 jo. Act No. 45 of 2009 concerning Fisheries (Fisheries Law). As stated in Article 8 of the Fisheries Law, namely: "Every person is prohibited from catching fish and / or cultivating fish by using chemicals, biological materials, explosives, tools and or methods, and / or structures that can harm and or endanger the sustainability of fish resources and or the environment in the Indonesian Fish Cultivation Territory. In addition, according to the World Food and Agriculture Organization (FAO), criminal acts in fisheries or illegal fishing are referred to as Illegal, Unregulated (FAO-IUU Fishing in Code of Conduct For Responsible Fisheries, 1995).

The existence of Act No. 45 of 2009 concerning Fisheries is a positive step and is a basis or rule in deciding legal issues related to illegal fishing. The Fisheries Law adopts several provisions of international law on maritime affairs, one of which is the 1982 United Convention on the Law of the Sea (UNCLOS) and Indonesia has ratified the UNCLOS through Act No. 17 of 2008.

UNCLOS 1982 places Indonesia as having sovereign rights to carry out the use of conservation and management of fish resources in the Exclusive Economic Zone and the high seas which is carried out based on applicable international requirements or

standards. The Economic Exclusive Zone has a special legal status which is *sui generis* and *sui juris* (Didik Mohammad Sodik, *International Maritime Law and Regulations in Indonesia: Rafika Aditama*, 2011, p. 103) which means that in view of the EEZ territorial law, in this case it cannot be equated with legal treatment in a territorial area which is the sovereign territory of a country. This is also emphasized in the preamble to Act No. 32 of 2014 concerning Marine, which states that its management must be in accordance with the national development interests of the population of the country concerned. Management of the oceans must reflect the sovereignty of the nation which must be maintained for its sustainability and sustainability, and must not be exploited simply to fulfill the economic needs controlled by certain parties.

## 2. Research Methods

This study uses normative research methods, namely legal research conducted to find solutions to existing legal problems and legal problems. The results of this study are intended to provide a prescription for the proposed problem. According to Peter Mahmud Marzuki (Peter Mahmud Marzuki, *Legal Research*, Kencana Pranada Media Group, Jakarta, 2010, p. 35), legal research is a process to find legal rules, legal principles, and legal doctrines to answer legal issues in illegal fishing by foreign vessels in the perspective of international law.

## 3. Result and Discussion

**Illegal Fishing Arrangements** According to the UNCLOS 1982 United Nations Conventions on the Law of Sea 1982, in general, it differentiates the marine areas where the state can enforce its laws against IUU fishing, namely the sea areas that are under sovereignty and the sea areas where a country has jurisdiction. The sea area subject to the sovereignty of a coastal or archipelagic state is inland waters and territorial seas or archipelagic waters and territorial seas. Meanwhile, the marine area where a coastal or archipelagic country has sovereign rights and jurisdiction is the EEZ and the continental shelf. The EEZ region has a *sui generis* (unique or different) legal status (The term *sui generis* is used to describe types of legal rules that are specially made to regulate something that is specific or unique). The uniqueness lies in the existence of the rights and obligations of the coastal state and other countries over the EEZ. In contrast to the territorial sea, where the coastal state has sovereignty, in the EEZ coastal countries only have sovereign rights. The sovereign rights are limited to the exploration and

exploitation of marine resources, both biological and non-living resources. (Usmawadi Umar; National Seminar with the theme “Thirty Years of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 and the Challenges of Indonesian Maritime Diplomacy”, Palembang, 13 November 2012, Abdul Qodir Jaelani and Udiyo Basuki, “Illegal, Unreported, and Unregulated (IUU) Fishing: Efforts Preventing and Eradicating Illegal Fishing in Building Indonesia’s Maritime Axis”, *Journal of the Supremacy of Law*, Vol. 3, June 2014).

The UNCLOS 1982 states that the rights and jurisdiction of coastal states in the EEZ include exploration and exploitation of marine resources (living and non-living, creating and enforcing laws and regulations relating to exploration and exploitation of marine resources, construction of artificial islands and other permanent installations, and conduct marine scientific research. UNCLOS 1982 does not specifically regulate IUU Fishing. However, UNCLOS 1982 only regulates generally about law enforcement in a country’s territorial sea and EEZ. If violations of the laws and regulations of the coastal state occur in the territorial sea or inland waters a country, then in accordance with the sovereignty granted by Article 2 UNCLOS 1982, the coastal state can impose its legal rules on said ships.

The provisions of Article 2 above will only apply if the violation has an impact on the coastal state or disturbs the security of the coastal state as provided in Article 27 paragraph (1) UNCLOS 1982 which stipulates that “criminal jurisdiction of the coastal state cannot be exercised on board foreign ships that are currently crossing the territorial sea to arrest anyone or to carry out an investigation in connection with any crime committed on board a ship during such passage, except in the following cases: (a) when the result of the crime is felt in the coastal State; (b) if the crime is of a kind which disturbs the peace of the country or the order of the territorial sea; (c) if the assistance of the local authorities has been requested by the captain of the ship and diplomatic representatives or consular officials of the flag state; (Article 2 UNCLOS 1982). However, if the elements mentioned in Article 27 paragraph (1) UNCLOS 1982 are not fulfilled, then the coastal state cannot exercise criminal jurisdiction over the ship. Article 27 paragraph (5) UNCLOS 1982 further refers to Chapter V regarding EEZ in terms of violations of state laws and regulations relating to exploration and exploitation of fishery resources.

Law enforcement against illegal fishing contained in UNCLOS, which is regulated in Article 73 such as Enforcement of laws and regulations of coastal states, namely: First, the coastal state can exercise its sovereign rights to explore, exploit, conserve, and manage biological resources in the EEZ, take such action, including boarding a ship, inspecting, arresting and carrying out judicial processes, as necessary to ensure

compliance with laws and regulations which are stipulated in accordance with the provisions of this convention. Second, the captured ships and their crew must be released immediately after being given an appropriate bail or other form of security. Coastal state penalties imposed for violations of fisheries legislation in the EEZ may not include confinement, in the absence of a reverse agreement between the countries concerned, or any other form of corporate punishment. Fourth, in the case of the arrest or detention of a foreign ship, the coastal State must immediately notify the flag state, through appropriate channels, of the actions taken and of any penalties subsequently imposed.

In accordance with the provisions of Article 73 UNCLOS 1982 related to illegal fishing, if a foreign vessel does not comply with the statutory regulations of the coastal state in terms of conservation of fishery resources, the coastal state can catch the ship. However, the captured vessel and crew must immediately be released with a reasonable bond given to the coastal state. Penalties for foreign ships also cannot be in the form of corporal punishment, namely imprisonment, this is because in the EEZ, coastal states only have sovereign rights, not sovereign rights.

*Illegal fishing* in its regulation it is often juxtaposed with other fishery criminal acts, namely Unreported and Unregulated Fishing which literally can be interpreted as illegal fishing activities, fishery activities that are not regulated by existing regulations, or their activities are not reported to an institution or fisheries management agency available. In other words, illegal fishing is fishing activities that fall into the following categories (Victor PH Nikijuluw, *Socio-Economic Dimensions of Illegal Blue Water Crime Fisheries*, PT. Pustaka Cidesindo, Jakarta, 2008), p. 18):

1. Conducted by a foreign person or ship in a waters which is the jurisdiction of a country without permission from that country or contrary to the prevailing laws and regulations.
2. Contrary to applicable national regulations or international obligations.
3. Conducted by a ship flying the flag of a country that is a member of a regional fisheries management organization but operates not in accordance with the conservation and management provisions applied by that organization or the provisions of applicable international law.

In national law, there are several rules or legal norms that regulate fisheries crime (illegal fishing), namely; Act No. 31 of 2004 and amendments to Act No. 45 of 2009 concerning Fisheries; Act No. 27 of 2007 concerning the Management of Coastal

Areas and Small Islands as well as other implementing regulations such as: PP. 54 of 2005 concerning Fishery Business; PP No. 60 of 2007 concerning Conservation of Fish Resources, PP no. 30 of 2008 concerning the Implementation of Fisheries Research and Development, Minister of Marine Affairs and Fisheries Regulation No. PER.13 / MEN / 2005 concerning the Coordination Forum for Handling Crime in the Fishery Sector; Minister of Marine Affairs and Fisheries Regulation No. PER.14 / MEN / 2005 concerning the National Commission for the Study of Fish Resources, Minister of Marine Affairs and Fisheries Regulation No. PER. 15 / MEN / 2005 concerning Catching Fish and / or Fish Cultivators in the Indonesian Fish Cultivation Territory for Non-Commercial Purposes; Minister of Marine Affairs and Fisheries Regulation No. PER.05 / MEN / 2008 concerning Capture Fisheries Business; Minister of Marine Affairs and Fisheries Regulation No. PER.06 / MEN / 2008 concerning the Use of Hela Trawls in North East Kalimantan Waters; Minister of Marine Affairs and Fisheries Regulation No. PER.08 / MEN / 2008 concerning the Use of Direct Fishing Equipment (Gill Net) in EEZ.

### **3.1. Implementation of UNCLOS 1982 provisions related to the criminal act of illegal fishing**

Indonesia has ratified the UNCLOS 1982 with Act No. 17 of 1985 concerning Ratification of the United Nations Convention on the Law of the Sea. Therefore, for an archipelago and a coastal country like Indonesia, this event is a step to be proud of. The enactment of the UNCLOS 1982 jurisdiction means that the status of the Indonesian archipelago with jurisdiction over the exploitation of living and non-living natural resources is no longer doubted internationally.

Implementation of the UNCLOS 1982 provisions related to criminal acts in the field of fisheries (illegal fishing), based on the theory of transformation and the theory of delegation, the provisions of the 1982 Convention on the Law of the Sea were transformed and delegated into national law through legislation. The implementation of the UNCLOS provisions, one of which is related to the provisions regarding the division of sea areas as previously described. The elaboration of the UNCLOS provisions in national law related to the regulation of Indonesian marine areas, is further regulated in Act No. 6 of 1996 concerning Indonesian Waters.

According to Act No. 6 of 1996 concerning Indonesian waters, Indonesian territorial waters include the Indonesian territorial sea, archipelagic waters and inland waters. These territorial waters are territories that are under the Sovereignty of the Unitary State

of the Republic of Indonesia. Therefore, Indonesia has full authority over the territory and can enact laws within its sovereign territory (Budiyono, Monograph, Limitation of Archipelagic State Sovereignty over Sea Territory, Justice Publisher, Bandar Lampung, 2014, p. 84). This is reaffirmed in Act No. 32 of 2014 concerning Marine (Ocean Law). The Maritime Law also emphasizes the division of marine areas, just as the Waters Law has divided the Indonesian sea areas. According to Article 7 of the Maritime Affairs Law, Indonesia's sovereignty as an archipelagic state includes land areas, inland waters, archipelagic waters and territorial seas, including airspace above it and the seabed, and the land underneath, including the natural resources contained therein. Indonesian sovereignty is subject to the provisions of laws and regulations and UNCLOS 1982.

In relation to illegal fishing practices in water areas, the involvement of foreign parties in illegal fishing can be classified into two, namely (Suhardi, Legal Aspects of Handling Illegal Fishing in Indonesia, at <http://mukhtar-api.blogspot.co.id>, accessed on 22 March 2018): First, semi-legal theft, which is theft of fish by foreign vessels by utilizing a legal fishing permit owned by a local entrepreneur, using a ship with a local flag or the flag of another country. This practice is still categorized as illegal fishing because in addition to catching fish in water areas that are not their rights, the perpetrators of illegal fishing directly send their catch without going through the process of landing fish in a legal area. This practice is often referred to as the "flag of convenience" (FOC) practice.

Second, purely illegal theft, namely the fishing process carried out by foreign fishermen and foreign vessels using their own flag to catch fish in the territory of a country. However, illegal fishing is not only carried out by foreign parties but also by local fishermen or entrepreneurs. Illegal fishing carried out by fishermen or local entrepreneurs can be classified into three groups, namely;

1. A fishing boat with an Indonesian flag, a former foreign fishing vessel, whose documents are fake or do not even have a license;
2. Indonesian fishing vessels (KII) with "asphalt" documents or the official who issued the documents, not the authorized officials, or fake documents;
3. Indonesian fishing boats (KII) without any documents, which means fishing without a permit.

Related to the illegal fishing practice, based on the results of the FGD, the official of the KKP's Marine and Fishery Resources Monitoring (12 Results of FGD with the Director General of Supervision of Marine and Fisheries Resources, KKP, 23 February 2015), the modus operandi of IUU fishing that occurs in the territorial waters of the Republic of Indonesia is:

1. Without permission;
2. Has a license but violates provisions, for example provisions concerning fishing gear, fishing ground and port of call;
3. Document falsification;
4. Manipulation of requirements (Deletion Certificate, Bill of sale);
5. Trans-shipment at sea never reports at the fishing port;
6. Double flagging.

UNCLOS implementation related to illegal fishing is also regulated in Act No. 5 of 1983 regarding EEZ. This law contains provisions governing fish resource utilization activities in the EEZ. In Article (4) of the law, it is explained that in the EEZ area, Indonesia has sovereign rights, other rights, jurisdiction and obligations over the resources that are in the EEZ (Article 4 of Act No.5 of 1983 concerning ZEEI). In the context of exercising sovereign rights, other rights, jurisdiction and obligations, the competent law enforcement officers of the Republic of Indonesia can take law enforcement actions in accordance with Act No. 8 of 1981 concerning Criminal Procedure Law. This is also confirmed in Act No. 45 of 2009 concerning Amendments to Act No. 31 of 2004 concerning Fisheries, Article 27 paragraph (2) and paragraph (3) which regulates every person who owns and or operates a fishing vessel with a foreign flag used to catch fish in EEZ must have SIPI, as well as everyone who operates a fishing vessel. Indonesian flag in the fisheries management area of the Republic of Indonesia or operating fishing vessels with foreign flags in EEZ are required to carry the original SIPI.

Furthermore, based on Article 29 of the Fisheries Law, fishery businesses in the Indonesian Fisheries Management Area may only be undertaken by citizens of the Republic of Indonesia or Indonesian legal entities. (2) Exceptions to the provisions as referred to in paragraph (1) shall be granted to foreign persons or legal entities conducting fishing businesses on the EEZ, as long as this concerns the obligations of the Republic of Indonesia based on international agreements or provisions of applicable international law.

This Fishery Law regulates that every person conducting and marketing fish in the Indonesian Fisheries Management Area (WPPRI) and in EEZ is required to have a Fishery Business License (SIUP), Fishing Permit (SIPI), and Fish Transport Ship Permit. (SIKPI). In fact, many foreign ships do not meet these requirements, in this case they do not have the complete documents. In fact, some have letters that turn out to be fake letters (Results of an interview conducted by Novianti with the Directorate of Marine Police,



Riau Islands Police, March 2015). Therefore, the Fisheries Law regulates the prohibition of letter forgery with the use of fake SIUP, SIPI, and SIKPI. Every fishing boat carrying out fishery activities is required to have a Sailing Approval Letter issued by the harbormaster at the fishing port and a fishing boat operation-worthy letter from the fisheries supervisor issued by the fisheries supervisor after fulfilling the administrative requirements and technical feasibility (Article 42 and Article 43 of Act No. 31 of 2004 concerning Fisheries.).

If there is a violation of these provisions, in order to enforce Indonesian law, based on this law a fisheries court is also established which has the authority to examine, adjudicate, and decide criminal acts in fisheries that occur at WPPRI, whether committed by Indonesian citizens or citizens. foreign. The perpetrators of illegal fishing will be examined and tried in court and then sentenced if guilty. The perpetrators who are guilty, according to this law, will be punished in the form of administrative sanctions, imprisonment, or paying a fine. In addition to these sanctions, Act No. 45 of 2009 concerning Fisheries explicitly regulates the imposition of sanctions in the form of burning and or sinking foreign vessels carrying out illegal fishing in the territorial waters of the Republic of Indonesia.

The government's policy of sinking ships raises pros and cons in society as well as concerns that the sinking action will have an impact on relations between countries, especially from the countries of origin of the fishermen. In fact, these actions are associated with human rights violations, law violations, and inhuman acts. However, based on an FGD with a marine law expert from UNPAD (Results of FGD conducted by Novianti with Maritime Law Experts from UNPAD, 23 February 2013), the policy of sinking ships that violate the rules in Indonesian waters will not worsen relations between countries. There are several reasons why the sinking of ships does not worsen relations between countries, namely as follows:

1. There is no country in the world that justifies the actions of its citizens who commit crimes in other countries.
2. The sunk of foreign fishing vessels is a ship that does not have an operating license to catch fish in the Indonesian sea area. They committed crimes in Indonesian territory.
3. The drowning is carried out in a sovereign territory and is Indonesia's sovereign right in the EEZ.
4. The act of drowning is carried out on the basis of a valid legal umbrella, namely Article 69 paragraph (4) of the Fisheries Act No. 45 of 2009 concerning Fisheries.

Prior to 2009, the drowning process had to go through a court decision that was legally binding.

Regarding the act of sinking ships, the Fisheries Law has regulated this action. Even in international conventions there is also no specific provision prohibiting the act of sinking a ship. However, what needs to be paid attention to is the sinking process of the ship, especially as regulated in Article 69 paragraph (4) and Article 76A of the Fisheries Law. Article 69 stipulates that fisheries investigators and / or supervisors can take special measures in the form of burning and or sinking fishing vessels with foreign flags based only on preliminary evidence. Furthermore, Article 76A of the Fisheries Law stipulates that the destruction of ships can be carried out after obtaining approval from the Head of the District Court. This provision does not state the standard regarding the approval given by the Chief Justice regarding whether the ship can be destroyed? Or are they detained to be subsequently auctioned or even granted to the closest local residents in the area where the fisheries crime occurred? This will raise doubts for a judge in determining his approval for the act of destroying the ship. For this reason, a legal umbrella is needed which provides a benchmark for a Chairman of the District Court in approving ship destruction. In this case, the principle of certainty can be used as a reference so that the judge has confidence in giving approval.

Related to fisheries criminal sanctions as regulated in the Fisheries Law in general, it can have a deterrent effect. However, perpetrators of criminal acts, especially foreign nationals who commit fishery crimes in the EEZ region have not yet caused a deterrent effect because they cannot be sentenced to imprisonment unless there is an agreement between the Government of the Republic of Indonesia and the government of the country concerned (Article 102 of Act No. 2004). This provision is parallel to Article 73 paragraph (2) of UNCLOS 1982 which also does not justify the regulation of the coastal state to carry out imprisonment or corporal punishment if there is no agreement with the country concerned.

Related to administrative sanctions for perpetrators of violations as regulated in Act No. 45 of 2009 Amendment to Act No. 31 of 2004 concerning Fisheries has not caused a deterrent effect and is not effective. For example, foreign fishing vessels catching on EEZ using ABK do not comply with the provisions as stipulated in Article 35 A paragraph (3) of Act No. 45/2009, namely administrative sanctions in the form of warnings, license suspension, or license revocation, is not effective because foreign fishing vessels fishing in Indonesian fisheries management areas are not equipped with documents and there are no agents in Indonesia. In addition, according to the Tanjung Pinang Lantamal official, What becomes an obstacle for investigators in carrying out their duties to

investigate criminal acts in the field of fisheries is the investigation of skippers who are foreign nationals who catch fish on the EEZ. In this case the law has stipulated that detention cannot be carried out against the captain, and investigators do not have a place to place suspects who are not detained so that it will be difficult to carry out supervision. Meanwhile, another obstacle is that for foreign national ship captains or witnesses in the trial process, immigration as the agency that takes care of foreigners who will be returned to their country, does not want to accept the custody of the captain or witnesses, before the case process has permanent legal force. In this case the law has stipulated that detention of a captain cannot be carried out, and investigators do not have a place to place suspects who are not detained so that it will be difficult to carry out supervision. Meanwhile, another obstacle is that for foreign national ship captains and witnesses who are in the trial process, immigration as the agency that takes care of foreigners who will be returned to their country, does not want to accept the custody of the captain or witnesses, before the case process has permanent legal force. In this case the law has stipulated that detention cannot be carried out against a captain, and investigators do not have a place to place a suspect who is not detained so that it will be difficult to carry out supervision. Meanwhile, another obstacle is against the ship captain who is a foreign national or witness who is in the trial process, immigration as the agency that takes care of foreigners who will be returned to their country, does not want to accept the custody of the captain or witnesses, before the case process has permanent legal force.

The main obstacle faced is that law enforcers do not have a special budget to carry out maintenance or support the skipper and crew. On the other hand, if this is not fulfilled, then law enforcers will be threatened with human rights violations, namely the right to life of the captain and his crew.

The implementation of UNCLOS 1982 is also regulated in the shipping sector in Indonesian waters, namely through Act No. 17 of 2018 concerning Shipping. Sailing is an integrated system consisting of water transportation, to ports, safety and security, as well as protection of the maritime environment. <sup>18</sup> The scope of enactment of the Shipping Law also applies to foreign ships sailing in Indonesian waters. Foreign ships are prohibited from carrying passengers and or goods between islands or between ports in Indonesian territorial waters.

### 3.2. The Efforts of the Indonesian State in Handling Illegal Fish Theft Practices in Indonesian Waters

The government through the Ministry of Marine Affairs and Fisheries (KKP) issued several policies to prevent illegal fishing practices, including the following:

a. Formation of the Task Force to Eradicate Illegal Fishing

This task force consists of representatives from a number of agencies, namely the KKP, the Presidential Work Unit for Development Supervision and Control (UKP4), the Financial Transaction Reports and Analysis Center (PPATK), the Directorate General of Customs and Excise, Ministry of Finance, the Ministry of Transportation, Bank Indonesia, and the Police. The task force includes monitoring the temporary suspension (moratorium) of capture fisheries business permits, verifying fishing vessels that are being built overseas, and calculating state losses due to illegal fishing. According to KKP data, the potential non-tax state revenue (PNBP) from the marine and fisheries sector which reaches IDR 25 trillion per year has not been utilized, from fish and non-fish resources. (Koran Sindo, Strategies to Overcome Fish Theft, <http://m.koransindo.com> accessed on 12 May 2015). The potential value is planned to be charged to foreign-flagged vessels over 30 gross tonnes (GT) operating in the territory of the Republic of Indonesia (NKRI). This method is taken to return the lost state money. Currently, of the 5,329 large vessels with tonnages over 30 GT operating in Indonesian waters, 20% of them are vessels with foreign flags. So far, each vessel only contributes IDR. 90 million through the payment of fishing vessel licensing fees. In fact, in one go, each ship can produce up to 2,000 tons of fish. Of course, the value obtained is very large compared to the value of contributed state income. In total, the amount donated to PNBP is only around IDR. 300 billion per year. This licensing suspension is intended to reduce the number of losses from the marine and fisheries sector. For information, at least 207 ships have had their permits frozen.

b. Improve Supervision Facilities and Infrastructure

Supervision facilities and infrastructure are the most important factors in carrying out supervisory activities. The existence of supporting facilities and infrastructure is needed in the management and supervision of fishery resources in Indonesian waters. The existence of supporting facilities and infrastructure will help the implementation of effective and controlled supervision. One form of improvement of facilities and infrastructure in the field of supervision carried out by the government is by using the Vessel Monitoring System (VMS), which is a fishing vessel monitoring system with a transmitter which functions to oversee the fishing process carried out in Indonesian

waters. Supervision of VMS is carried out on land through the assistance of satellites which supervise the activities of fishing vessels that have installed transmitters. (Yaya Mulyana, Conservation of Indonesian Marine Areas for the Future of the World. Directorate of Marine National Conservation and Plants, Jakarta: Directorate General of Marine, Coastal and Small Islands, Ministry of Marine Affairs and Fisheries. 2008. Pg 21). Besides using VMS tools, the government also improves cooperation and coordination between government agencies that have authority at sea, namely the Ministry of Marine Affairs and Fisheries, the Ministry of Transportation, the Indonesian Navy, and the Water Police. The supervision of fishery resources is carried out in the following stages:

1. Supervision in the pre-production stage is carried out by prioritizing prevention (preventive) through the application of SLO and Minutes of Ship Inspection Results (HPK) of Departure as a result of ship document inspection.
2. Supervision at the production stage is carried out by monitoring fishing vessels and fish transporting vessels using VMS transmitters and patrolling the supervisory vessels through verification of document / permit data, fishing gear, vessel size, crew members, fishing area, catch, and activation of VMS transmitters.
3. Supervision in the post-production stage is carried out after fishing, by examining fishing vessels and fish-transporting vessels, as well as the catch at the port.

#### c. Law Enforcement in the Fisheries Sector

The implementation of law enforcement in the fisheries sector is very important and strategic in order to support fisheries development in a good and sustainable manner. The existence of a legal certainty is something that is really needed. Because as long as the perpetrators of illegal fishing in Indonesian waters are only subject to very light sanctions, even though the State's losses due to illegal fishing are very large. The firmness of the apparatus in charge of handling security at sea as the main law enforcement apparatus is very important in order to realize the security and territorial integrity of the Unitary State of the Republic of Indonesia (NKRI) and to protect the natural resources at sea from various forms of security disturbances and law violations in the territorial waters of Indonesia's national jurisdiction. The manifestation of security at sea essentially has two dimensions, namely the enforcement of sovereignty and the enforcement of law which are interrelated with one another. The perception of security at sea is not only a matter of enforcing sovereignty and law but security at sea contains an understanding that the sea is safe for users and free from threats or disturbances to marine use or exploitation activities, namely (Tedjo Edhy Purdijanto, Guarding Maritime State Border, Sinar Grafika, Jakarta, 2001, p. 27):

1. The sea is free from threats of violence, namely threats using organized armed force that have the ability to disturb and endanger personnel or the state, these threats can be in the form of piracy, robbery, sabotage of vital objects, piracy and acts of terror.
2. The sea is free from navigation threats, namely threats posed by geographic and hydrographic conditions and inadequate navigation aids so that it can endanger shipping safety.
3. The sea is free from threats to marine resources, in the form of pollution and destruction of marine ecosystems, as well as conflicts in managing marine resources. d. The sea is free from the threat of violations of law, namely non-compliance with national and international laws that apply in the waters, such as illegal fishing, smuggling and others.

Realizing security stability at sea requires efforts to deal with all forms of disturbances and threats at sea by mobilizing the strength of various agencies authorized to enforce the rule of law at sea.

## 4. Conclusion

The implementation of the UNCLOS 1982 provisions relating to illegal fishing is implemented or translated into several national laws, namely Act No. 6 of 1996 on Indonesian Waters, Act No. 32 of 2014 concerning Maritime Affairs, Act No. 5 of 1983 concerning EEZ, Act No. 45 of 2009 concerning Amendments to Act No. 31 of 2004 concerning Fisheries which explicitly regulates sanctions in the form of burning and or sinking foreign ships that carry out illegal fishing in the territorial waters of the Republic of Indonesia. The implementation of UNCLOS 1982 is also regulated in the shipping sector in Indonesian waters, namely through Act No. 17 of 2008 on Shipping. Shipping is an integrated system consisting of water transportation, ports, safety and security, and protection of the marine environment. The legal aspect of the strict sinking of foreign ships does not conflict with international law, especially in UNCLOS 1982 because the subjects protected in Article 73 paragraph (3) of UNCLOS 1982 are humans, not ships, where people can be fined or deported without imprisonment while the ship can be confiscated. or even drowned by the Indonesian government. The government through the Ministry of Marine Affairs and Fisheries (KKP) issued several policies to prevent illegal fishing practices, including the establishment of a Task Force to Eradicate Illegal

Fishing, Improving Facilities and Infrastructure for Supervision and Law Enforcement in the Fisheries Sector.

## References

- [1] Jaelani, A. Q. and Basuki, U. (2014). Illegal, Unreported, and Unregulated (IUU) Fishing: Efforts to Prevent and Eradicate Illegal Fishing in Building Indonesian Maritime Axis. *Journal of Legal Supremacy*, vol. 3. pp. 168-192
- [2] Budiyo, M. (2014). *Pembatasan Kedaulatan Negara Kepulauan Atas Wilayah Laut*. Bandar Lampung: Justice Publisher.
- [3] Sodik, D. M. (2011). *Hukum Laut Internasional dan Pengaturannya di Indonesia*: Rafika Aditama.
- [4] Marzuki, P. M. (2010). *Penelitian Hukum*. Jakarta: Kencana Pranada Media Group.
- [5] Jaelani, Q. (2015). The Political Law of the Constitutional Court Decision Number 36 / PUUX / 2012 concerning the Disbandment of BP MIGAS: Efforts to Restore State Sovereignty Towards Human Rights Protection. *Panggung Hukum Journal*, vol. 1, issue 1.
- [6] Purdijanto, T. E. (2001). *Mengawal Perbatasan Negara Maritim*. Jakarta: Sinar Grafika.
- [7] Umar, U. (2012, November). Cooperation between the Directorate General of Law and International Treaties, Ministry of Foreign Affairs with the Faculty of Law, Sriwijaya University, Palembang, 2002. Palembang: Presented at *National Seminar with the theme "Thirty Years of the 1982 UN Convention on the Law of the Sea (UNCLOS) and the Challenges of Indonesian Maritime Diplomacy"*.
- [8] Victor, P. H. (2008). *Dimensi Sosial Ekonomi Perikanan Illegal Blue Water Crime*. Jakarta: Pustaka Cidesindo.
- [9] Act No. 31 of 2004 and amendments to Act No. 45 of 2009 concerning Fisheries.
- [10] Article 2 UNCLOS 1982.
- [11] Article 4 of Act No.5 of 1983 concerning EEZ.
- [12] Article 42 and Article 43 of Act No. 31 of 2004 concerning Fisheries.
- [13] FAO-IUU Fishing (Code of Conduct for Responsible Fisheries, 1995).
- [14] *Koran Sindo*. (2020, May) Retrieved from <http://m.koransindo.com>.
- [15] *Mukhtar-api*. (2018, March) Retrieved <http://mukhtar-api.blogspot.co.id>.
- [16] *Finance.detik*. (2014, December). Retrieved March 20, 2018 from <http://finance.detik.com/read/2014/12/01/152125/2764211/4/menteri-susikerugian-akhibat-illegal-fishing-rp-240trillion>.