

# Enforcement of Illegal Fishing Laws that was Done by Foreign Ships in the Indonesian Sea Region, Viewed from International Sea Law

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**Abstract:** This study aims to determine and examine the law enforcement of illegal fishing and the factors that inhibit law enforcement of illegal fishing conducted by foreign ships in the sea of Indonesia in terms of international maritime law. The type of research used by the authors in this study is a type of normative legal research. Normative legal research is done by examining the object of the form of legislation or legal norms applicable or applied to a particular legal problem. Concerning the type of research used the approach. The results showed that according to the 1982 International Maritime Law Convention (UNCLOS 1982) law enforcement of illegal fishing has been regulated in Article 73 UNCLOS 1982 while in the Indonesian National Law has been regulated in Article 69 Paragraph (4) law Number 45 of 2009 on Fisheries. Further obstacles to law enforcement are the impenetrable enforcement, lack of insight, and the integrity of law enforcement, and the lack of an active role and awareness of the community to assist law enforcement of illegal fishing in the Indonesian marine territory.

**Keywords:** Illegal Fishing, Law Enforcement, UNCLOS 1982, International Law.

## 1. INTRODUCTION

International law is the overall legal norms and principles governing relations or issues that cross national boundaries between state and state, countries with other legal subjects, not state or legal subjects not state to each other (Kusumaatmadja, 1976: 3). International law or public international law is a more popular term used today. Current international law does not only regulate relations between nations or between nations. One of the subjects of international law is the state. The state is the most important legal subject, the most important, and has the greatest authority as a subject of international law (Starke, 2010: 77).

A sovereign state means that the state does not recognize a power higher than its power (Pitcher, T. 2009). The highest power is limited by the territory of the country so that the state has the highest authority within its borders according to international law. This means that all people who are in an area are in principle subject to the legal authority of the state that has the power (Masfiani, 2016: 2). A fixed territory is a basic requirement for a country.

Coastal countries have full sovereignty in their territorial seas (including the seabed and the air above them) along with the obligation to guarantee the right of peaceful crossing for foreign ships (Priyanto, 2007: 5). Indonesia is one country that has many beaches considering Indonesia's status as an archipelago. Indonesia is also said to be a country that has wealth and potential of large biological resources. Indonesia's potential is an opportunity and economic potential that can be utilized for the advancement of the Indonesian economy, as well as the backbone of national development (Jaya, 2016: 2). The abundance of fisheries resources in Indonesian marine waters has attracted the attention of foreign parties to also be able to enjoy them illegally through illegal fishing activities (Muhamad, 2012: 60).

Illegal Fishing can be interpreted as a fishing activity that violates the law, where the fishery activities are carried out by a particular country or foreign vessel in waters that are not its jurisdiction without permission from the State that has jurisdiction or fishing activities are contrary to the laws and regulations of that country. Until now fish theft activities in Indonesia are quite alarming. The factors that cause fish theft in Indonesian waters are inseparable from the global strategic environment, especially the condition of fisheries in other countries that have sea borders, and the fisheries system in Indonesia itself. Illegal fishing activities were

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carried out by foreign fishermen from neighboring countries in the region who entered Indonesian waters illegally (Muhamad, 2012: 60).

Illegal fishing activities by foreign fishermen in Indonesian waters do not stand alone but are suspected to be part of a cross-country network that operates systematically and sustainably. Illegal fishing that occurs in Indonesian waters, carried out by foreign fishermen, can be interpreted as a transnational crime because its activities and networks are cross-border in the perpetrators involved and their various activities exceed national borders. This illegal cross-border fishing activity is a serious problem for Indonesia (Muhammad, 2012: 61).

The strict action taken by the Indonesian government was to sink or blow up or burn illegal fishing vessels (Keith, H. 2006). This action reaps praise and criticism. Praise for those who support efforts to uphold the country's sovereignty over its maritime territory which are violated by foreign vessels for various purposes. Criticism was made by those who felt that the state's actions were too harsh and had the potential to cause bad relations with the country of origin of the ship (Sefriani, 2016: 189). These actions are carried out so that law enforcement in Indonesia is firm and effective so that foreign fishermen will be deterred from catching fish illegally and there will no longer be a huge loss suffered by the Indonesian state.

The act of burning and / or sinking of foreign ships is controversial, that is, on one hand, Indonesia takes a policy or decisive action to maintain the sovereignty of its territory, but on the other hand the policy or action invites a reaction from other countries, especially countries whose vessels are submerged by Indonesia because they are considered to conflict with international provisions and is considered wrongdoing (Bekkevold, D. 2012). Other countries may retaliate against the strict actions taken by Indonesia against Indonesian ships and their citizens. Thus related to the case about illegal fishing, the writer is interested in writing an article entitled Law Enforcement of Illegal Fishing Conducted by Foreign Vessels in the Indonesian Ocean Territory Judging from International Sea Law (Mazany & Cross, M. L. 999).

The illegal fishing activities are carried out by foreign fishermen from neighboring countries in the area who enter Indonesian waters illegally. Through various modus operandi, these foreign fishermen catch fish in Indonesian waters and then trade them outside Indonesia with multiple profits. This illegal fishing has

cost the country financially, as it has significantly reduced productivity and catches, as well as has threatened Indonesia's marine fishery resources. Foreign fishermen who frequently enter Indonesian waters, among others, come from Thailand, Vietnam, the Philippines, and Malaysia. Natuna waters, North Sulawesi waters, and the waters around Maluku as well as the Arafura Sea are the areas most prone to illegal fishing activities. The vulnerability of Indonesian waters from illegal fishing activities, apart from the fact that these waters contain large potential fishery resources, also because the geographical position of the Indonesian waters is in border waters or adjacent to international waters so it is very open to the possibility of entry of fishermen. foreigners into Indonesian waters and catching fish illegally (Muhamad, S. V, 2016).

Illegal fishing activities by foreign fishermen in Indonesian waters do not stand alone but are suspected to be part of a cross-country network that operates systematically and sustainably (Wahjono, 2010). This illegal activity is carried out to gain economic benefits, and the potential for that profit is very open to being obtained in Indonesian waters which have large fishery resources. This means that illegal fishing activities that occur in Indonesian waters, which are carried out by foreign fishermen, can be interpreted as a transnational crime because the activities and networks are cross-border; the actors involved and their various activities transcend national borders. This illegal cross-border activity is a serious problem for Indonesia (Graham, 2011).

Indonesia's efforts to tackle illegal cross-border fishing activities are neither easy nor sufficient for the Indonesian government alone. Bilateral cooperation between Indonesia and neighboring countries in the region, especially between Indonesia and countries where fishermen often enter Indonesian waters illegally, also need to be developed and developed. Through the development of bilateral cooperation between Indonesia and neighboring countries in the region, it is hoped that this cross-border illegal fishing activity can be handled properly. The formulation of the problem of this research are: 1) How are law enforcement efforts against illegal fishing carried out by foreign vessels in Indonesian sea areas?

## 2. RESEARCH AIM

The purpose of this study is: 1) To find out the law enforcement against illegal fishing carried out by foreign vessels in Indonesian sea areas, 2) To develop

knowledge about the inhibiting factors of law enforcement against illegal fishing. The benefits obtained from this research are: 1) Providing an understanding of Illegal Fishing Law Enforcement efforts undertaken by foreign vessels in Indonesian sea areas, 2) It is expected to be an additional reference for the development of legal science in the field of international law regarding the juridical analysis of law enforcement Illegal Fishing by foreign vessels in Indonesian sea areas in terms of International Sea Law, 3) Expected to be of benefit to the international community as a means of developing thinking about law enforcement Fishing, 4) It is hoped that the international community can find out about the importance of the inhibiting factors of law enforcement Illegal Fishing between these countries.

### 3. LITERATUR REVIEW

#### 3.1. Definition of Law Enforcement

Law enforcement as a process, in essence, is the application of discretion concerning making decisions which are not strictly regulated by legal principles but have an element of personal judgment. Conceptually, the essence of law enforcement lies in the activity of conveying the relationship of values described in solid rules and attitudes as a series of final value definitions, to create, maintain and maintain social peace. This philosophical based conception requires further explanation so that it will appear more concrete.

Law enforcement is a process to bring legal desires into reality. What is called legal desire here is none other than the thoughts of the legislature formulated in legal regulations. The rule of law. The formulation of the thoughts of lawmakers as outlined in legal regulations will also determine how law enforcement is carried out (Raharjo. 2009). Law enforcement functions as protection for human interests. For human interests to be protected, laws must be enforced. Law enforcement can take place normally, peacefully, but it can also occur because of lawlessness. In this case, the law which has been violated must be enforced. It is through law enforcement that the law becomes a reality. In upholding the law, three elements must be considered, namely (Mertokusumo. 1999):

##### 3.1.1. Legal Certainty (*Rechtssicherheit*)

The law must be enforced and enforced. Everyone expects that the law can be enacted in the event of a concrete event. How the law should apply, basically it should not be deviated: fiat justitia et pereat mundus

(although the world will collapse, the law must be enforced). That is what legal certainty wants. Legal certainty is justifiable protection against arbitrary action, which means that a person will get something that is expected in certain circumstances.

##### 3.1.2. Benefits (*Zweckmassigkeit*)

The community expects benefits in implementing or enforcing the law. Law is for humans, so law enforcement or law enforcement must provide benefits or benefits to society. Do not let it be that because the law is enforced or enforced, there will be unrest in the community.

##### 3.1.3. Justice (*Gerechtigkeit*)

The public has a strong interest in the implementation or enforcement of the law, justice is considered. The implementation and enforcement of the law must be fair. Law is not synonymous with justice. The law is general, binding everyone, generalizing. Whoever stole must be punished: whoever stole must be punished, regardless of who stole. On the other hand, justice is subjective, individualistic, and does not generalize.

#### 3.2. Definition of Illegal Fishing

Illegal fishing, in terms of terms, is a foreign term popularized by legal experts in Indonesia which later became a popular term in the mass media and became an interesting legal study for environmental activists. In terms of illegal fishing, from a literal meaning, it comes from English, which consists of two words illegal and fishing. "Illegal" means illegal, prohibited, or contrary to the law. "Fish" means fish or meat and "fishing" means fishing as a source of livelihood or fishing ground. Based on this literal definition, it can be said that illegal fishing by language means fishing or fishing activities carried out illegally.

Law Number 45 of 2009 concerning Fisheries states that fishing is an activity to obtain fish in waters that are not cultivated by any means or means, including activities that use ships to load, transport, store, cool, handle, process, and / or preserve it. Illegal fishing means all forms of fishing activities that violate Law Number 45 of 2009 and other prevailing laws and regulations. Supervision of marine and fisheries resources, the Ministry of Marine Affairs and Fisheries, limits the term illegal fishing, namely the meaning of illegal, unreported and unregulated (IUU) fishing which means illegal fishing activities, fishery activities that are not regulated by existing regulations, or its activities are

not reported to an available fishery management institution or institution.

Every crime has an impact on all sectors of life, the state, society, and the marine environment are the direct victims of the illegal fishing act. The impact of this loss is one of the main reasons a human action can be classified as a crime, illegal fishing, in this case, is a real crime and should be dealt with firmly because it has caused enormous losses to all sectors of the life of Indonesian society.

A country that has a large sea area must also have authority in the sea. It is said to be a sovereign state if Indonesia can show the world that it has legal jurisdiction and can compete in the international arena in holding its nation accountable. This of course has to do with rights and obligations. It is this authority within one country that must be able to solve problems from both internal and external to the state. It is said to be a jurisdiction because Indonesia must mark boundaries and show its power in enforcing rules and boundaries that must be guarded by foreign countries when entering its jurisdiction. This will make it easier to determine what problems are happening right now. This will make a country recognized internationally that Indonesia is a sovereign country.

A set of regulations based on norms that are united between the law and the sea area in a country is known as international sea law. This law is known as the law that establishes the jurisdiction of a country in its sea area. In this law, it is required to study several aspects that may and will arise in the sea. Every country always updates and revises the international law of the sea to include the justice that every country in its territorial waters must-have. The United Nations held a meeting to discuss international maritime law (UNCLOS), an international agreement from the UN conference on international maritime law.

The agreement from this meeting explained that every country has the right and responsibility for anything that happens in its territorial waters. The state has the responsibility to manage and use the sea as a resource that benefits business, the environment, and fish farming in the oceans. Currently, the law used is based on the United Nations Convention on International Law of the Sea (UNCLOS) on archipelagic countries. It is said to be an archipelago because the country is founded on one island after another. This means that the islands are made into a group of natural and beautiful forms that can be seen and assessed in

their geographic structure, economic development, and political culture.

The discussion regarding the role of international law in international relations related to the eradication of illegal fishing in Indonesian waters has often become a very important issue and is no longer strange, especially concerning this era of globalization, which functions as a system and international law is an autonomous legal system. independent and international politics with other provisions of international law serves to serve the needs of the international community including an authentic state. Fishermen who come from outside countries often commit illegal fishing in Indonesian waters. This is done by them to get double profits and make buying and selling transactions outside the territory of Indonesia.

This certainly makes the state lose, because local fishermen will decrease their productivity and damage the marine ecosystem that has been cultivated by the state and residents. Ships from foreign countries that are often caught theft are from Thailand, Vietnam, the Philippines, and Malaysia. The sanction of sinking foreign vessels is not only carried out by Indonesia, Australia has already punished the perpetrators with sanctions stipulated by international maritime law. The ship to be sunk is an unregistered vessel and has a fishing license in the territory of Indonesia.

Under UNCLOS international maritime law which is regulated by the United Nations concerning fishing sovereignty, it is only allowed if the ship has secured shipping and fishing permits. And between the two countries must have a bilateral agreement on maritime territories. The ship will immediately sink when the entire crew is rescued and handed over to undergo all legal proceedings in the country. This has been determined from the UNCLOS meeting contained in Article 62 paragraph (4) and Article 37 which explains that Indonesia is given full privileges to protect its EEZ areas if violations are found from foreign ships in its territorial waters. However, Article 73 explains that the sentence given does not extend to corporal punishment. Corporal punishment will be approved if Indonesia has entered into a bilateral agreement with that other country. Ships that have stolen will be subject to fines and the crew will be deported to their country of origin.

#### **4. RESEARCH METHODS**

Research is a scientific activity related to analysis and construction, which is carried out methodologically,

systematically, and consistently. Methodological means according to a certain method or way, systematic means that it is based on a system and consistent means that there are no contradictions within a certain framework, thus research is carried out through analysis and construction of existing data. Research is an effort to explore an object that is unclear, obscure, or even without explanation for it. A logical and systematic study of the principles that guide scientific research (methodology) is intended as a basic principle and not as a method (method or design for conducting research). Every scientific research carried out is closely related to the disciplines under study and because law science is a branch of scientific knowledge, in carrying out legal research it is still related to the basic principles of scientific research (Diantha, 2016: 12).

Based on the nature of this research is descriptive research, namely research that intends to provide as accurate a data as possible regarding law enforcement regarding illegal fishing that is carried out in the territory of Indonesia based on international law. Based on its form, this research is evaluative and prescriptive research, evaluative research because this research intends to provide an in-depth analysis of law enforcement in Indonesian territorial waters against illegal fishing, while prescriptive research because this research will also provide the right solution based on the principles of international law. to overcome obstacles in law enforcement in law enforcement in illegal fishing by the rainy state in Indonesian waters, and the purpose of this legal research is normative legal research and literature.

Data analysis is a description of the methods of analysis, namely how to use the collected data to be used in solving research problems. Data obtained from the results of library research in the form of primary, secondary, and tertiary legal materials are used to describe conceptions and theories. The data in this study. To carry out this qualitative analysis through the following stages:

- a. Collecting data;
- b. The data obtained are then grouped according to the object of research;
- c. The grouped data is then described and explained;
- d. The data that has been described is then evaluated using applicable legal provisions to

see their suitability or vice versa, and then compared, and

- e. Establish conclusions and constituendum if necessary.

## 5. RESULTS AND DISCUSSION

### 5.1. Law Enforcement Against Illegal Fishing Conducted by Foreign Vessels in the Indonesian Ocean Territory

Illegally what is happening in the Indonesian seas is increasingly worrying. Based on data reported by the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia the state loss due to illegal fishing activities reaches 300 trillion rupiahs per year (Petrossian, G. A. 2015). This figure is equivalent to 25% of the total potential of Indonesian fisheries. A large number of these losses threatens the welfare of local fishermen and also the sustainability of marine and fisheries resources.

Factors causing Illegal Fishing are as follows:

- 1) Increasing levels of global fish consumption. A fact that shows the increasing consumption of fish in Indonesian society today with the pattern of rising fish consumption that has reached a range of 26 kg/capita / year (Österblom, H., & Bodin, Ö, 2012). While at the world level the increase in fish consumption is estimated by the Food and Agriculture Organization, hereinafter referred to as FAO, will continue to increase.
- 2) Fish resources in other countries are decreasing. FAO's 2007 publication shows that around 52 percent of the world's marine fish stocks have experienced fully exploited. This means that around 52 percent of the world's marine fish stocks have been closed for further exploitation. Besides, the FAO report also states that around 17 percent of the world's fisheries have been overexploited. Even in the November 2006 Science Journal publication, it was mentioned that if the growth of exploitation of fish resources as at present, it is estimated that world commercial fisheries will "collapse" "In 2050 (Chavez, C., & Salgado, H. 2005).
- 3) Weak surveillance of officers in the Indonesian sea. The weak reactive attitude of the authorities obliged to monitor the Indonesian sea is one of the factors causing the rampant illegal fishing

cases that occur in Indonesian waters today, even though Indonesia has many laws and regulations governing fisheries and marine affairs, around a dozen regulations governing fisheries and maritime affairs. One of the efforts to monitor the government is the existence of a Vessel Monitoring System (VMS), which is a monitoring system for fishing vessels with a transmitter that functions to oversee the fishing process carried out in Indonesian waters (Fujita, R. 2018).

Law enforcement is a process to realize legal goals, legal ideas become reality. Law enforcement contains aspects of the legality of a regulation that is applied to every person and / or legal entity (corporation) with the existence of orders, prohibitions, and the threat of criminal sanctions that can be imposed on any violator found guilty based on the judge's decision (Chapsos, I., & Hamilton, S. 2019).

International Law Enforcement in UNCLOS 1982 broadly distinguishes sea areas into two categories of sea areas where the state can enforce its laws against Illegal, Unreported and Unregulated, hereinafter referred to as IUU Fishing, which is a sea area under the sovereignty and a sea area where a country has jurisdiction (Jaelani, A. Q. 2014).

Although it does not specifically regulate illegal fishing, UNCLOS 1982 regulates general law enforcement at sea relating to the use of countries in all sea areas, including utilization in terms of fishing.

UNCLOS 1982 broadly differentiates/divides sea areas and illustrates the balance of rights and obligations of countries in the use of marine resources. As explained earlier, UNCLOS divides the sea area into three parts, namely: (1) the territory which becomes the country's sovereignty, namely the sea area where the state has full authority and can enforce its national laws; (2) the sea area which is the jurisdiction of the state, that is the sea area which only becomes the authority in certain matters; (3) sea areas which do not become state jurisdiction (Magrath, W. B. 2014).

In the case of coastal state law enforcement in ZEEI (Indonesian Exclusive Economic Zone), based on Article 73 of UNCLOS 1982, which states that if foreign vessels do not comply with the coastal state fisheries legislation in EEZ, coastal countries can ride, inspect, capture and process court over the ship and notify the state of the ship's flag. However, the captured vessel

and crew must immediately be released with a reasonable bond given to the coastal states. Penalties against foreign ships may also not be in the form of corporal punishment, namely prison (Amir, 2013: 76).

Indonesia has ratified the 1982 UNCLOS through Law No.17 of 1985 concerning Ratification of the United Nations Convention on The Law of the Sea 1982 (UNCLOS), Indonesia ratified/codified 1982. UN Convention on the Law of the Sea 1982 will apply to Indonesia.

Under Article 29 of the Fisheries Law, fisheries business in the Fisheries Management Territory of the Republic of Indonesia may only be carried out by citizens of the Republic of Indonesia or Indonesian legal entities. Exceptions to the provisions referred to in paragraph (1) are granted to foreign persons or legal entities that carry out fishing business in EEZI, as long as this concerns the obligations of the Republic of Indonesia based on international agreements or applicable international legal provisions (Article 29 of Law Number 31 2004 concerning Fisheries).

This law stipulates that every person who conducts fisheries in the field of catching, cultivating, transporting, processing, and marketing fish in the Fisheries Management Area of the Republic of Indonesia and EEZ must have a Fishery Business License (SIUP), a Fishing License (SIPI) ) and Fish Transport Vessel License (SIKPI) (Law No. 31 of 2004 concerning Fisheries). Many foreign ships do not meet these requirements, in this case, they do not have the complete documents. Some even have letters that turn out to be fake (Solihin, 2008: 163). Also, every fishing vessel that conducts fishery activities must have a Sail Approval issued by the syahbandar at the fishing port and a fishing boat operation and fishery supervisory certificate issued by the fishery inspector after meeting administrative and technical feasibility requirements.

If there is a violation of these provisions, to enforce the law in Indonesia, based on this law a fisheries court is also established that has the authority to examine, try, and decide on criminal actions in the field of fisheries that occur in the Fisheries Management Territory of the Republic of Indonesia, both those carried out by Indonesian citizens and foreign citizens. The perpetrators of illegal fishing will be examined, tried in court, and then sentenced if proven guilty. The guilty perpetrators, according to this law will be handed down in the form of administrative sanctions, imprisonment, or pay a fine (Magrath, W. B. 2014).

In addition to these sanctions, Law Number 45 the Year 2009 concerning Fisheries strictly regulates the imposition of sanctions in the form of burning and/or sinking of foreign vessels conducting illegal fishing in Indonesian waters. This is stated in Article 69 paragraph (4), that in carrying out its functions as a fishery investigator and / or supervisor, fisheries investigators and / or supervisors can take special measures in the form of burning and / or sinking of foreign-flagged fishing vessels based on sufficient preliminary evidence (Article 69 paragraph (4) of Law No. 45 of 2009 concerning Fisheries).

Also, in terms of law enforcement in Indonesia related to illegal fishing cases in the Indonesian seas, Law No. 32 of 2014 concerning Maritime Affairs is also stipulated. Just like the water Act, the Marine Act also emphasizes the division of the sea area. According to Article 7, Indonesia's sovereignty as an archipelagic nation encompasses land areas, inland waters, island waters, and territorial seas, including the air space above it and the seabed and the land beneath it, including the natural resources contained therein. Indonesian sovereignty is subject to statutory provisions, the United Nations Convention on the Law of the Sea of 1982, and related international law. In additional zones, Indonesia only has certain jurisdictions. Whereas the EEZ and continental shelf have sovereign rights as explained in the previous sub-chapter.

## **5.2. Factors that become Obstacles to Law Enforcement Against Illegal Fishing by Foreign Vessels in the Indonesian Ocean Territory**

The impacts arising from the existence of Illegal Fishing are as follows:

- 1) Economic Impact, the Food and Agriculture Organization (FAO) states that Indonesia's losses resulting from IUU Fishing are estimated at 30 trillion rupiahs per year. FAO states that currently, the world's stock of fish resources that still allows for increased capture is only 20 percent, while 55 percent are already in full use and the remaining 25 percent are threatened with their loss.

This is made clear by the statement from the Ministry of Maritime Affairs and Fisheries (KKP) that the loss rate is around 25 percent of the total potential of fisheries owned by Indonesia, which is valued at 1.6 million tons per year. In 2003-2007, the CTF carried out surveillance and

capture of 89 foreign vessels and 95 Indonesian fishing vessels. State losses that can be saved are estimated at Rp. 439.6 billion.

- 2) Impact on the Conservation of Fish in the Indonesian Sea, Even though Indonesia's fish wealth is very abundant, but if it is continuously exploited utilizing destructive means by illegal fishing, then the next few years the preservation of Indonesia's marine fish stocks will be exhausted, let alone at sea it has never been held replanting fish seeds, the fish that are left now are the result of the natural reproductive cycle of the fish themselves (Petrossian, G. A. 2012).
- 3) Impacts that occur in Indonesian waters will threaten the preservation of national and even global stocks, fisheries practices that are not reported or whose reports are wrong, or reports that are below standard, and unregulated fisheries practices will cause problems in the accuracy of data on available fish stocks. If the fish stock data is inaccurate, it is almost certain fisheries management will not be exact and will threaten the preservation of national and global fish stocks. This can be categorized as doing IUU Fishing practices. In other words, if the Indonesian government is not serious in anticipating and reducing the activities of IUU in Indonesian waters, then Indonesia will naturally be "impressed" to facilitate IUU activities and open the possibility to receive international sanctions (Tarigan, M. I. 2018).

The impact or results arising from the existence of illegal fishing Enforcement which has been running for almost 2 years is not yet maximal. There are still many foreign ships that enter Indonesian waters and steal fish freely. Minister of Maritime Affairs and Fisheries Susi Pudjiastuti asked for the eradication of illegal fishing practices to continue. If you can take action against illegal fishing vessels even more assertive. Susi Pudjiastuti said that there is still a lot of work to be done, enforcement of illegal fishing has given extraordinary results, Indonesia has good hopes but with the sinking of ships, illegal fishing enforcement has not deterred. The eradication of illegal fishing needs to be done to safeguard large-scale capture fisheries assets. If this continues, Indonesia can become the largest producer of fish in the world (<https://m.kumparan.com/@kumparannews/susi-minta-peregakan-illegal-fishing-tahun-ini-lebih-tegas>).

The factors that become obstacles to law enforcement against Illegal Fishing are as follows (Masita, 8):

- 1) The object of law enforcement is difficult to penetrate the law, the object referred to here is the perpetrators involved in illegal fishing crimes namely the perpetrators who are the mastermind of the activity. Particularly in this case are the Acting Officials, the Law Enforcement Officials, or Civil Servants who are not specifically regulated in the Law concerning fisheries. The application of article 56 paragraph (1) of the Criminal Code that qualifies the perpetrators of criminal acts as those who commit, who order to commit, and who participate in committing criminal acts can also be applied in illegal fishing crimes involving many parties.
- 2) Weak coordination between law enforcers, Weak coordination among Law Enforcement Agencies can lead to overlapping authority and respective policies, so it is very prone to cause conflicts of interest. Uncoordinated law enforcement is one of the obstacles in tackling illegal fishing crimes. The judicial process from the investigator to the trial requires a very large cost, a very long legal process and very adequate facilities/ infrastructure require special expertise in handling the case (Bailey, M., & Sumaila, U. R. 2015).
- 3) Lack of insight and integrity of law enforcers. In practice, we find that insights and integrity of law enforcers are still lacking and need further improvement. This starts from a recruitment process that is not based on transparent, participatory, and accountable principles for professionals to vocational education, training, and supplies that are inadequate for law enforcement officials against illegal fishing (Masita, 12).

Nunung Mahmudah in his book states that the obstacles/obstacles of law enforcement against illegal fishing are classified into 2, namely Constraints in general divided into 1) legal substance, positive law in the form of various laws and regulations is the basis for law enforcement. An act can be said to be true or false based on applicable law, including what type of sanctions are imposed on crime also based on statutory regulations. Regarding illegal fishing committed by foreign corporations, Indonesia has yet to

have a legal umbrella to ensnare corporations as the real perpetrators.

The legal process so far only touches the crew who only as executor. No wonder this crime continues to increase from year to year. In terms of the substance of the law, the government must immediately make laws and regulations that can put foreign corporations as suspects, defendants, and impose criminal sanctions on them. Because law enforcement officials will not be able to work without a strong legal basis (Mahmudah, 2015: 119). 2) Law enforcement officials, in this case, related to the quantity and quality of law enforcement officers. Quantity relates to the number or complete absence of law enforcement officers. While the quality is related to the ability and skills (professionalism) of law enforcement officials in handling cases of illegal fishing in Indonesian waters. Deficiencies both in terms of quantity and quality of law enforcement officers in Indonesian waters.

Law enforcement officials both in terms of preventive and repressive in handling illegal fishing cases, in addition to being very limited in number, their abilities are still limited. At present, most law enforcement officers can only carry out preventive tasks, such as monitoring, coaching, and warning. In the case of illegal fishing activities, they do not take legal action. The reality shows that law enforcement officials, such as investigators, public prosecutors, and judges who understand the rules or legal provisions are limited in number and ability. For this reason, it is necessary to educate professional law enforcement officers so that they are expected to be able to handle illegal fishing cases based on a comprehensive-integral insight (Mahmudah, 2015: 120). 3) Facilities and facilities, facilities, and facilities are tools to achieve the goal of law enforcement in the territory of Indonesia. The absence or limitations of facilities and other supporting facilities will greatly affect the success of law enforcement. Facilities and facilities are needed because in handling these cases will involve a variety of sophisticated technological devices that for operational purposes require experts and maintenance costs are quite expensive and 4) public awareness, Limited legal awareness of the community towards the territorial sea, the sea of the islands, and the inland sea due to the commonness of the community towards various aspects. In this case, the image and public awareness of the waters can be nurtured and improved through efforts such as counseling, guidance, example, and community involvement in tackling illegal fishing (Muhamad, S. V. 2016).



The second is the Constraints in the Legal process namely the stages of investigation and investigation as follows: 1) Lack of awareness and insight of the community and officials in understanding the nature of illegal fishing. 2) Inadequate technical ability of the apparatus can lead to doubt and delay in acting. 3) Difficulties in obtaining accurate data and facts that are relevant to the evidence. 4) There are many opportunities for suspects or defendants to make deterrence efforts, or complicate research and examination. 5) Infrastructure and facilities are still limited, including technical and personal capability costs. 6) Frequent third-party interventions that occur using influence and power. 7) Confidentiality that is less guaranteed (Mahmudah, 2015: 121). prosecution stage as follows: 1) Difference in perception between the judge and the prosecutor regarding the sentence and construction. 2) Lack of strong and relevant evidence. 3) Limited ability of laboratory technology. 4) Expert witnesses with ability and experience are still rare. 5) Lack of the ability of judges and prosecutors to master water law in Indonesia. Besides, they also lack the understanding of specialists and lack the techniques and evidentiary tactics at trial. 6) Lack of coordination and cooperation between investigators, prosecutors, and expert witnesses so that the cooperation carried out is inefficient and ineffective (Mahmudah, 2015: 122).

## 6. CONCLUSION

The conclusions of this study are:

1. Law enforcement against illegal fishing according to international sea law has been regulated in the 1982 UN Sea Law Convention (UNCLOS 1982) in Article 73 of UNCLOS 1982, which states that if foreign vessels do not comply with fisheries laws and regulations coastal states in EEZ, coastal countries can board, inspect, capture and conduct litigation on these vessels and notify the state of the ship's flag. However, the captured vessel and crew must immediately be released with a reasonable bond given to the coastal states. In Article 2 of UNCLOS 1982 states that coastal countries can apply all legal regulations and even criminal laws against foreign ships, the provisions of the Indonesian national law used are in Law Number 45 of 2009 concerning Fisheries which regulates strictly giving sanctions in the form of arson and / or sinking of foreign vessels conducting illegal fishing in Indonesian waters. This is stated in

Article 69 paragraph (4), that in carrying out its function as a fishery investigator and / or supervisor, fisheries investigators and / or supervisors can take special measures in the form of arson and / or sinking of foreign-flagged fishing vessels based on sufficient preliminary evidence.

2. The obstacle of illegal fishing law enforcement is that the object of law enforcement is difficult to penetrate the law, the object in question is the perpetrators involved in illegal fishing crimes, namely the perpetrators who are the mastermind of the activity. Weak coordination between law enforcers, this can lead to overlapping authority and policies of each so that it is very prone to cause conflicts of interest. Lack of insight and integrity of law enforcers, one of the crucial factors in law enforcement against illegal fishing is the insight and integrity of law enforcers, especially concerning formal material legal mastery.

## SUGGESTIONS

The suggestions based on this research are as follows: 1. It is hoped that these foreign vessels will not engage in illegal fishing in Indonesian sea areas without a clear permit because this is already a crime. This is detrimental to Indonesia. The country's biological resources will be used up by foreign parties who commit illegal fishing. 2. Law enforcement officers in Indonesia are expected to be able to act more decisively and readily in enforcing all applicable regulations to have a deterrent effect on the crew of foreign vessels so that they are reluctant and even afraid to do illegal fishing in the Indonesian sea areas.

## ACKNOWLEDGEMENTS

Thanks to the Chancellor of the Ganesha University of Education, Deputy Chancellor of the Ganesha University of Education for allowing the author to conduct research, then we would like to thank the relevant ministries who have helped researchers in conducting this research. Hopefully, this research can contribute to science.

## REFERENCES

- Agnew, D. J., Pearce, J., Pramod, G., Peatman, T., Watson, R., Beddington, J. R., & Pitcher, T. J. (2009). Estimating the worldwide extent of illegal fishing. *PLoS one*, 4(2), e4570. <https://doi.org/10.1371/journal.pone.0004570>

- Akhmad Solihin. 2008. *Pemberantasan Illegal, Unreported and Unregulated Fishing Menurut Hukum Internasional dan Implementasinya Dalam Peraturan Perundang-Undangan Nasional*. Tesis. Universitas Padjadjaran, Bandung.
- Bailey, M., & Sumaila, U. R. (2015). Destructive fishing and fisheries enforcement in eastern Indonesia. *Marine Ecology Progress Series*, 530, 195-211.  
<https://doi.org/10.3354/meps11352>
- Battista, W., Romero-Canyas, R., Smith, S. L., Fraire, J., Efron, M., Larson-Konar, D., & Fujita, R. (2018). Behavior change interventions to reduce illegal fishing. *Frontiers in Marine Science*, 5, 403.  
<https://doi.org/10.3389/fmars.2018.00403>
- Belardo Prasetya Mega Jaya. 2016. *Tindak Penegakan Hukum Terhadap Kapal Asing Yang Melakukan Illegal Fishing Di Wilayah Pengelolaan Perikanan Indonesia*. Skripsi. Fakultas Hukum, Universitas Lampung.
- Berita Online, *Susi Minta Penegakan Illegal Fishing Tahun Ini Lebih Tegas*, Januari 2017 tersedia pada <https://m.kumparan.com/@kumparannews/susi-minta-penegakan-illegal-fishing-tahun-ini-lebih-tegas> diakses pada tanggal 9 April 2018.
- Chapsos, I., & Hamilton, S. (2019). Illegal fishing and fisheries crime as a transnational organized crime in Indonesia. *Trends in Organized Crime*, 22(3), 255-273.  
<https://doi.org/10.1007/s12117-018-9329-8>
- Charles, A. T., Mazany, R. L., & Cross, M. L. (1999). The economics of illegal fishing: a behavioral model. *Marine Resource Economics*, 14(2), 95-110.  
<https://doi.org/10.1086/mre.14.2.42629256>
- Chavez, C., & Salgado, H. (2005). Individual transferable quota markets under illegal fishing. *Environmental and Resource Economics*, 31(3), 303-324.  
<https://doi.org/10.1007/s10640-005-1543-6>
- Diantha, I Made Pasek. 2016. *Metode Penelitian Hukum Normatif*. Jakarta: PT Fajar Interpretama Mandiri.
- Euan Graham, "Transnational Crime in the Fishing Industry: Asia's Problem?," RSIS Commentaries No. 62/2011, S. Rajaratnam School of International Studies, Nanyang Technological University, Singapore, 25 April 2011.
- FAO, Journal, Technical Guidelines For Responsible Fisheries, Implementation of The International Plan of Action To Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, *Fiat Panis*, 2012.
- Ismi Yulia Masfiani. 2016. *Penyelesaian Sengketa Batas Maritim Antara Costa Rica dan Nicaragua di Laut Karibia dan Samudera Pasifik dalam Perspektif UNCLOS 1982*, Volume 5, No 3. Diponegoro Law Journal. Fakultas Hukum Diponegoro.
- Jaelani, A. Q. (2014). Illegal Unreported and Unregulated (IUU) Fishing: Upaya Mencegah dan Memberantas Illegal Fishing dalam Membangun Poros Maritim Indonesia. *Supremasi Hukum: Jurnal Kajian Ilmu Hukum*, 3(1).
- Jakarta. Lembar Negara Republik Indonesia Tahun 2009 Nomor 5073.
- Khodijahismail, *Illegal Fishing dan Kedaulatan Laut Indonesia*, Tersedia pada <http://khodijahismail.com/wp-content/uploads/2016/11/CONTOH-TUGAS-MAKALAH.pdf> diakses pada tanggal 3 Juni 2018.
- Konvensi Hukum Laut PBB 1982 (*United Nations Convention on The Law of The Sea 1982 (UNCLOS)*).
- Kusumaatmadja, Mochtar. 1976. *Pengantar Hukum Internasional*. Bandung: Bina Cipta.
- Mahmudah, Nunung. 2015. *Illegal Fishing Pertanggungjawaban Pidana Korporasi Di Wilayah Perairan Indonesia*. Jakarta: Sinar Grafika.
- Muhamad, S. V. (2016). Illegal Fishing Di Perairan Indonesia: Permasalahan Dan Upaya Penanganannya Secara Bilateral Di Kawasan. *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional*, 3(1).
- Muhamad, S. V. (2016). Illegal Fishing Di Perairan Indonesia: Permasalahan Dan Upaya Penanganannya Secara Bilateral Di Kawasan. *Jurnal Politika Dinamika Masalah Politik Dalam Negeri dan Hubungan Internasional*, 3(1).
- Nielsen, E. E., Cariani, A., Mac Aoidh, E., Maes, G. E., Milano, I., Ogden, R., ... & Bekkevold, D. (2012). Gene-associated markers provide tools for tackling illegal fishing and false eco-certification. *Nature communications*, 3(1), 1-7.  
<https://doi.org/10.1038/ncomms1845>
- Österblom, H., & Bodin, Ö. (2012). Global cooperation among diverse organizations to reduce illegal fishing in the Southern Ocean. *Conservation biology*, 26(4), 638-648.  
<https://doi.org/10.1111/j.1523-1739.2012.01850.x>
- Petrosian, G. A. (2012). *The decision to engage in illegal fishing: An examination of situational factors in 54 countries* (Doctoral dissertation, Rutgers University-Graduate School-Newark).
- Petrosian, G. A. (2015). Preventing illegal, unreported and unregulated (IUU) fishing: A situational approach. *Biological Conservation*, 189, 39-48.  
<https://doi.org/10.1016/j.biocon.2014.09.005>
- Prijanto, Heru. 2007. *Hukum Laut Internasional*. Malang: Bayumedia Publishing.
- Pujo Wahjono, 2010, "Transnational Crime and Security Threats in Indonesia," Strategy Research Project, US Army War College, Pennsylvania, 2010.  
<https://doi.org/10.21236/ADA518422>
- Republik Indonesia. 2004. Undang-Undang Nomor 31 Tahun 2004 Tentang Perikanan. Jakarta. Lembar Negara Republik Indonesia Tahun 2004 Nomor 4433.
- Republik Indonesia. 2009. Undang-Undang Nomor 45 Tahun 2009 Tentang Perikanan.
- Sander, K., Lee, J., Hickey, V., Mosoti, V. B., Virdin, J., & Magrath, W. B. (2014). Conceptualizing maritime environmental and natural resources law enforcement—The case of illegal fishing. *Environmental Development*, 11, 112-122.  
<https://doi.org/10.1016/j.envdev.2013.08.002>
- Sefriani. 2016. *Hukum Internasional Suatu Pengantar*. Jakarta: Rajawali Pers.
- Simela Victor Muhamad. 2012. *Illegal Fishing Di Perairan Indonesia: Permasalahan dan Upaya Penanganannya Secara Bilateral Di Kawasan*, Volume 3, No 1. Politika.
- Starke, J.G. 2010. *Pengantar Hukum Internasional*. Jakarta: Sinar Grafika.
- Sumaila, U. R., Alder, J., & Keith, H. (2006). Global scope and economics of illegal fishing. *Marine Policy*, 30(6), 696-703.  
<https://doi.org/10.1016/j.marpol.2005.11.001>
- Susanto Masita, *Penegakan Hukum Terhadap Tindak Pidana Penangkapan Ikan Secara Ilegal (Illegal Fishing) di Perairan Arafura Law Enforcement Of Illegal Fishing in Arafura Sea*.
- Tarigan, M. I. (2018). Implementation of Countermeasures Effort of Illegal Fishing in Indonesia (Case Study on Sinking the FV Viking Vessel). *JILS (Journal of Indonesian Legal Studies)*, 3(1), 131-146.
- Usmawadi Amir. 2013. *Penegakan Hukum IUU Fishing Menurut UNCLOS 1982 (Studi Kasus: Volga Case)*. Volume 12. Jurnal Opinio Juris.