

National Juridical Policy against Illegal Actions by Foreign Fishermen

Jerry Ferdian Mafazi Artana

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: jerryferdian.std@unissula.ac.id

Abstract: *The aim of this research is to determine and analyze the juridical policy of law enforcement for illegal actions of foreign fishermen in Indonesian waters. In this writing the author uses a normative juridical method with research specifications in the form of descriptive analysis. The sea or Indonesian waters are part of the Exclusive Economic Zone (EEZ), covering an area of up to 200 miles from the coastline. Within this maritime zone, the coastal state is given the right to the wealth or natural resources contained therein, and is given the right to utilize and issue legal policies, and is also given freedom for navigation activities, carrying out flights over its territorial boundaries and carrying out planting activities. Undersea cables and pipes for the benefit of the nation and state. Article 8 paragraph 1 of Law Number 45 of 2009 concerning Fisheries states that every person is prohibited from fishing and/or cultivating fish using chemicals, biological materials, explosives, tools and/or endangering the preservation of fish resources and/or the environment in the fisheries management area of the Republic of Indonesia.*

Keywords: *Illegal; Fishermen; Foreign; Policy.*

1. Introduction

In the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) states that the Republic of Indonesia is a state based on law based on Pancasila and the 1945 Constitution, which contains the meaning of all actions and behavioral patterns of citizens which must also be in sync with the norms regulated by the state.¹The objectives of the Indonesian state are stated in the opening of the Constitution, paragraph IV, which states that the establishment of the Indonesian State Government aims to protect all Indonesian people and all Indonesian territory and to advance general welfare, improve the life of the nation, and participate in implementing world order based on independence,

¹Supriyono, (2020), Criminology Study of Crime of Fencing the Stolen Goods, Jurnal Daulat Hukum, 3 (1), p 185

eternal peace and social justice.²Therefore, Indonesian people have the right to receive protection, safety and security in the perspective of national and state life. However, the facts that occur in people's lives are very inconsistent with the goals of the Indonesian state.³

In terms of sovereignty, as stated in Article 25A of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) that Indonesia is an archipelagic country, this provision confirms that Indonesia has a vast sea area which is divided into islands.⁴The sea can be used as a natural resource, transportation route, as a country's territorial boundary and other interests. Natural resources in the sea that are very useful for human life needs certainly require a legal basis to protect the interests in fulfilling the utilization of the contents of the sea.

The Indonesia sea consists of 2.7 km² of Exclusive Economic Zone or EEZ and 3.2 million km² of territorial sea, so that according to UNCLOS 1982 the total area of the Indonesian sea is 5.9 million km². This fact shows that Indonesia has quite large marine potential, even to the point of being able to become one of the supporting aspects of the Indonesian economy.⁵This can be seen in the economic potential of the fisheries sector reaching US\$ 82 billion per year.⁶So it can be said that the marine and fisheries sector can be used as a sector for the economy in Indonesia. But in realiti the development of the fisheries sector for the Indonesian economy must be delayed due to the rampant practice of Illegal Fishing that occurs in Indonesia.

The territory of the sea or waters of Indonesia is part of the Exclusive Economic Zone (EEZ), covering an area of 200 miles from the coastline. In this sea zone, the existence of coastal states is given the right to the wealth or natural resources contained therein, and is given the right to utilize and issue legal policies, and is also given the freedom to carry out navigation activities, carry out flight activities within its borders and carry out activities to plant cables and pipes under the sea for the benefit of the nation and state. The concept of the Exclusive Economic Zone arises from the need and conditions that are very urgent. While its development is based on history that originates from the needs that have

² Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, (2020) Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination, *Jurnal Daulat Hukum*, 3 (1), p 179

³ Isyadora Islami Salma, Rakhmat Bowo Suharto and Widayati, (2020), Sociological Juridical Review Of Children Appointment Through The Determination Of Judges In The Religious Court Of Semarang, *Jurnal Daulat Hukum*, 3 (1), p 10

⁴ Indra, Mexsasai, (2013), Urgency of Border Area Management in Relation to the Sovereignty of the Unitary State of the Republic of Indonesia, *Jurnal Selat*, 1 (1), p 13

⁵ Ridwan Lasabuda, (2013), Theoretical Review of Coastal and Marine Area Development from the Perspective of the Archipelagic State of the Republic of Indonesia, *Platax Scientific Journal*, 1 (2), p 92.

⁶ Zebua & Ramli, (2014), Analysis of the Influence of Number of Fleets, Number of Fishermen, GDP, and Investment on Fisheries Production in the Nias Region (Panel Data Analysis), *Journal of Economics and Finance*, 2 (8), p 465.

developed since 1945 which aims to expand the area of the coastal state's jurisdiction over the seas it owns. As an effort to realize this, it actually already has a clear legal source, the source used as a reference is in preparation for the issuance of UNCLOS III.

The issue of illegal fishing is no longer a new topic to discuss, the cases are increasing day by day both qualitatively and quantitatively with increasingly organized and systematic forms of committing these violations. Violations committed by irresponsible parties such as fishermen and foreign vessels carrying out illegal fishing activities such as fish bombing using explosives (bomikan), anesthesia, toxic materials, the use of fishing gear known as tiger trawls, duplication or falsification of fishing permits and other methods that fall into the category of fish theft crimes especially in Indonesian waters/seas.⁷

Based on this topic, to research it further and include it in legal research, by The aim of the research is to find out and analyze the legal policy for enforcing illegal actions by foreign fishermen in Indonesian waters.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

3. Results and Discussion

3.1. State Jurisdiction

The element of sovereignty is an important element for a country in carrying out its role as a subject of international law. Sovereignty is the highest power possessed by a country to freely carry out various activities according to its interests as long as the activities do not conflict with international law.

In its independent sovereignty, a country has jurisdiction within its country. Jurisdiction is the power, ability, authority, rights and formal authority to make decisions on objects, individuals, or carry out certain actions of legal subjects.⁸In this regard there are three types of jurisdiction, namely:

- 1) Jurisdiction to prescribe norms;
- 2) Jurisdiction to enforce the norm prescribed;

⁷Siti Munawaroh, (2019), Implementation of Sanctions for Sinking Foreign Vessels Engaged in Illegal Fishing by the Indonesian Government (International Law Perspective), *Mimbar Yustitia*, 3 (1), p. 20.

⁸Masyhur Effendi, Moh. Ridwan, Muslich Subandi, (1995), Introduction and Basics of International Law, IKIP Malang, Malang, p.89.

3) Jurisdiction to edjudicate.⁹

Initially, jurisdiction was the embodiment of a country's sovereignty, meaning that everyone in the territory of a sovereign country is subject to the jurisdiction of that country. The existence of jurisdiction shows that only the country has sovereignty (the highest power) to determine or enforce rules or to judge, which means that the country has sole authority that is not subject to the power of foreign countries.

The development of increasingly broad relations between countries makes international law play a very important role in regulating the interests of each country regarding the rights and obligations and responsibilities of each country related to jurisdiction. This is because the issue of jurisdiction does not only concern the domestic life of a country, but also the foreign life of a country in the international world. International law has recognized the jurisdiction of a country over individuals, objects, and events that occur in its territory.

The concept of state jurisdiction recognizes the term type of jurisdiction, namely territorial jurisdiction. In this jurisdiction, each country has jurisdiction over criminal acts committed in the territorial area of its country.¹⁰The criminal acts referred to in this case are not only those that occur within the land territory of the country concerned but also in the territorial sea area and in certain cases in additional lanes and in other zones included in the high seas area. There is an expansion that is stipulated regarding the technicalities of territorial jurisdiction by implementing two principles, namely:

a. Subjective Territorial Principle

This principle explains that each country exercises its jurisdiction to be able to prosecute and punish criminal acts committed within its territory, but the act is completed or resolved in the territory of another country.¹¹

b. Objective Territorial Principle

This principle explains that in the application of their territorial jurisdiction over criminal acts or other acts committed in another country, but carried out or completed within their territory or acts which have a very dangerous effect on the social and economic order within their territory.

The above principles of territorial jurisdiction applied to individuals are not limited to citizens alone, but also to foreigners residing in that country unless such foreigners have special rights.

3.2. Legal Policy for Law Enforcement of Illegal Actions by Foreign Fishermen in Indonesian Waters

⁹Ibid

¹⁰Huala Adolf, (2004), International Dispute Settlement Law, Sinar Grafika, Bandung, p.145

¹¹JGStarke, (1989), Introduction To International Law, p. 273.

Based on Article 1 number 10 of Law Number 45 of 2009 concerning Fisheries, it provides a definition of fishermen as people whose livelihood is fishing. Then Article 1 number 11 provides a definition of small fishermen which reads: small fishermen are people whose livelihood is fishing to meet daily needs using fishing vessels with a maximum size of 5 (five Gross Tons (GT)). Explanation of Article 18 paragraph (6) of Law of the Republic of Indonesia Number 32 of 2004 concerning Regional Government, what is meant by "small fishermen" are traditional Indonesian communities who use traditional fishing materials and tools.

According to Fargomeli, fishermen can be divided into owner fishermen (bosses), sharecropper fishermen (laborers/workers) and small fishermen, traditional fishermen, port fishermen (transport fishermen), and fishing companies/industries as follows:¹²

- a. A fisherman owner (boss) is a person or individual who carries out a fishing business, with the right or authority over the ship/boat and/or fishing gear used to catch fish.
- b. A fisherman (laborer/worker) is someone who provides his energy or works to catch fish, which generally forms a unit with others, and receives wages based on the profit sharing from the sale of the fish caught.
- c. Traditional fishermen are individuals whose job is to catch fish using boats and simple (traditional) fishing gear. With the limitations of boats and fishing gear, the reach of their fishing area is also limited, usually only 6 nautical miles from the coastline. These traditional fishermen are usually hereditary fishermen who catch fish to meet their living needs.¹³
- d. Small fishermen are basically derived from traditional fishermen, only with the modernization/motorization program for boats and fishing gear, they no longer rely solely on traditional boats or conventional fishing gear, but also use diesel or motors, so that the reach of the fishing area is somewhat wider or further.
- e. Carrier fishermen (transport fishermen) are fishermen who do not catch fish while their boats are not equipped with fishing gear, but instead set off carrying capital (capital from the cliff) which will be used to transact (buy) fish in the middle of the sea which will then be resold.

The legal basis for permits to use foreign vessels as a means for foreign fishermen in their mobility in marine fishing activities is as follows: a) Law Number 17 of 2008 concerning Shipping; b) Government Regulation Number 20 of 2010 concerning Transportation in Waters; c) Government Regulation Number 22 of 2011 concerning Amendments to Government Regulation Number 20 of

¹²Marhaeni Ria Siombo, (2010), National and International Fisheries Law, Jakarta: Gramedia Pustaka Utama, p.4

¹³Endang Retnowati, (2011), Indonesian Fishermen in the Vortex of Structural Poverty (Social, Economic and Legal Perspectives), Perspective Journal, XVI (3), p.213

2010; In completing the permit, the following requirements must be met: a) Company application letter. b) Work plan equipped with a schedule and work area of activities marked with geographical coordinates; c) Have a charter party between the national sea transportation company and the foreign ship owner and a work contract and / or Letter of Intent (LOI) from the employer.

The legal basis for regulating illegal fishing in Indonesia is:

1. Law Number 45 of 2009 concerning Fisheries

This law is an amendment to Law Number 31 of 2004 concerning Fisheries. There are several provisions related to a prohibition in terms of fishing so that the following article regulates what the prohibition is, the obligation to maintain the sustainability of plasma nutfah, and the amount of sanctions that will be given.

In Law No. 31 of 2004 concerning Fisheries, criminal provisions are contained in Chapter XV from Article 84 to Article 105.

Article 85 states:

"Any person who intentionally owns, controls, carries, and/or uses fishing gear and/or fishing aids that disrupt and damage the sustainability of fish resources on fishing vessels in the fisheries management area of the Republic of Indonesia as referred to in Article 9 shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah)."

Article 8 paragraph (1) of Law Number 31 of 2004 as amended by Law Number 45 of 2009 concerning Fisheries states:

"Everyone is prohibited from fishing and/or cultivating fish using chemicals, biological materials, explosives, tools and/or endangering the sustainability of fish resources and/or their environment in the fisheries management area of the Republic of Indonesia."

Violation of this article is subject to criminal penalties under Article 84 paragraph (1) of Law No. 31 of 2004 as amended by Law No. 45 of 2009 concerning Fisheries. This act constitutes a criminal act.

2. Law Number 5 of 1983 concerning the Exclusive Economic Zone of Indonesia

In this law, it is explained that the definition of the Exclusive Economic Zone (EEZ) is a path outside and bordering the Indonesian territorial sea as stipulated by the applicable law on Indonesian waters which includes the seabed, the land beneath it and the water above it with an outer limit of 200 (two hundred) nautical miles measured from the baseline of the Indonesian territorial sea. Its connection with illegal fishing lies in the regulation of the EEZ boundary line which is often used by illegal fishing perpetrators as a place of escape from the pursuit of Indonesian security forces, because it turns out that in this law there is a loophole for illegal fishing perpetrators to avoid the law, namely with Article 4 paragraph (3) which reads: "In the Indonesian Exclusive Economic Zone, freedom of international navigation and flight as well as freedom of installation of

submarine cables and pipes are recognized in accordance with the applicable principles of international maritime law." Article 5 paragraph (3) which reads "Without reducing the provisions of Article 4 paragraph (2), exploration and exploitation of a natural resource in a certain area in the Indonesian Exclusive Economic Zone by a person or legal entity or foreign government may be permitted if the amount of catch permitted by the government of the Republic of Indonesia for that type exceeds Indonesia's ability to utilize it." and of course there are no firm sanctions against perpetrators of illegal fishing which are explicitly stated in Law Number 5 of 1983.

3. Law Number 21 of 1992 Concerning Shipping

Many cases of illegal fishing are deliberately carried out by the perpetrators accompanied by shipping crimes, perhaps they do not realize that joint crimes like this will actually increase the criminal sanctions imposed, especially since the majority of ships used in carrying out illegal fishing are ships that violate this shipping law, for example, the captain or leader of the ship during sailing who violates the rules relating to traffic procedures, shipping lanes, route systems, navigation aids, and shipping telecommunications, then they can be charged with Article 15 paragraph (1). Although in reality this law is not very strict regarding illegal fishing cases because in reality this law only regulates the problem of ships used for sailing, not the substance of the activities of the sailing.

4. Law Number 6 of 1996 Concerning Indonesian Waters

What is meant by Indonesian waters is the territorial sea of Indonesia along with its archipelagic waters and inland waters. Then explained in detail regarding the definition of Indonesian waters, namely the waters that include the territorial sea of Indonesia, archipelagic waters and inland waters. The territorial sea of Indonesia is a sea lane 12 (twelve) nautical miles wide measured from the baseline of the Indonesian archipelago as referred to in Article 5.37 Indonesian archipelagic waters are all waters located on the inner side of the straight baseline of the archipelago without regard to depth or distance from the coast.

So when there are foreign ships crossing the areas as mentioned above, they must submit to and obey the regulations in force in Indonesia, for ships of all countries enjoy the right of peaceful passage through the territorial sea and archipelagic waters of Indonesia, but passage by foreign ships is considered to endanger the peace, order, or security of Indonesia, if the ship while in the territorial sea and/or in the archipelagic waters carries out activities prohibited by conventions and/or other international laws, one of which is illegal fishing activities, so that illegal fishing ships can be ensnared using this Law.

A country is considered to have jurisdictional authority under international law if the country has the competence/capacity to prosecute and punish an act or omission that is qualified as a crime based on the provisions of the national law

of the country concerned.¹⁴The state is also considered to have the authority to handle all crimes that occur within the boundaries of its territory without regard to the nationality of the perpetrator.¹⁵The sovereignty of a country is the first step to participating in international community relations, as well as to comply with the form of bonds in these relations.¹⁶

Sovereignty owned by a country shows that the country is an independent country and is not subject to the authority of another country, but this does not mean that the country's sovereignty is not limited by anything, because sovereignty is also the most important part for a country to be recognized in the international legal system where a country that has been recognized as having sovereignty is also a principle for the creation of peaceful international relations. The limitations of sovereignty are laws, both national and international laws, therefore illegal fishing must also be limited, avoided, and prevention and eradication must be carried out.

Jurisdiction has several types of provisions, including: State Jurisdiction, namely the right, power and authority to regulate; State jurisdiction over objects (things, problems, events, people, things); State jurisdiction based on the location of an object/problem. State jurisdiction, namely the right, power and authority to regulate: Legislative Jurisdiction, namely the jurisdiction of a country to create or establish a regulation to regulate an object or problem that is not solely domestic in nature. This arises when there is a problem but there is no regulation in its national law. So the problem is whether a country has the jurisdiction to regulate it. Executive Jurisdiction or also known as administrative jurisdiction, regarding the rights, power and authority of a country to implement or implement national regulations that have been made on a problem that is not solely domestic in nature. Judicial Jurisdiction, is the jurisdiction of a country to try and punish violators of regulations that have been made and implemented by the country concerned.

If there is a violation of the laws and regulations of a coastal state in the territorial sea or waters of a State, then based on the sovereignty in Article 2 of UNCLOS 1982 the coastal state can enforce its legal regulations and even its criminal law against ships that commit violations which violations have an impact or disrupt the security of the coastal State. Then in Article 27 paragraph 1 it is explained that if the elements mentioned are not met, then the coastal State cannot apply its criminal jurisdiction to the ship.

¹⁴Sri Dwi Retno Ningsih, Supanto, and Emmy Latifah, (2018), Corporations as Actors of Fisheries Crime in Indonesia, *Journal of Legal Dynamics*, 18 (2), p 208–214

¹⁵Ranu Samiaji, (2015), Harmonization of the Authority of State Institutions in Combating the Crime of Illegal Fishing in Indonesian Waters, *Collection of Student Journals of the Faculty of Law*, 1 (22), p. 13

¹⁶Joko Susanto and Ali Mashhar, (2019), Law Enforcement on Fisheries Crime After the Enactment of Law Number 45 of 2009: A Normative Analysis, *Journal of Law and Legal Reform*, 1 (1), p. 112

4. Conclusion

Article 8 paragraph (1) of Law Number 45 of 2009 concerning Fisheries states that everyone is prohibited from fishing and/or cultivating fish using chemicals, biological materials, explosives, tools and/or endangering the sustainability of fish resources and/or their environment in the fisheries management area of the Republic of Indonesia. Meanwhile, Law Number 6 of 1996 concerning Indonesian Waters states that when a foreign ship passes through the areas as mentioned above, it must comply with and obey the regulations in force in Indonesia. For ships of all countries, they enjoy the right of peaceful passage through the territorial sea and archipelagic waters of Indonesia, but passage by foreign ships is considered to endanger the peace, order or security of Indonesia if the ship, while in the territorial sea and/or in the archipelagic waters, carries out activities prohibited by conventions and/or other international laws, one of which is illegal fishing activities, so that illegal fishing ships can be prosecuted using this Law.

5. References

Books:

- Huala Adolf, (2004), *International Dispute Settlement Law*, Sinar Grafika, Bandung
- JG Starke, (1989), *Introduction To International Law*, Introduction To International Law
- Marhaeni Ria Siombo, (2010), *National and International Fisheries Law*, Jakarta: Gramedia Pustaka Utama
- Masyhur Effendi, Moh. Ridwan, Muslich Subandi, (1995), *Introduction and Basics of International Law*, IKIP Malang, Malang

Journals:

- Endang Retnowati, (2011), *Indonesian Fishermen in the Vortex of Structural Poverty (Social, Economic and Legal Perspectives)*, *Perspective Journal*, XVI (3)
- Indra, Mexsasai, (2013), *The Urgency of Border Area Management in Relation to the Sovereignty of the Unitary State of the Republic of Indonesia*, *Jurnal Selat*, 1 (1)
- Isyadora Islami Salma, Rakhmat Bowo Suharto and Widayati, (2020), *Sociological Juridical Review Of Children Appointment Through The Determination Of Judges In The Religious Court Of Semarang*, *Jurnal Daulat Hukum*, 3 (1)
- Joko Susanto and Ali Mashhar, (2019), *Law Enforcement on Fisheries Crime After the Enactment of Law Number 45 of 2009: A Normative Analysis*, *Journal of Law and Legal Reform*, 1 (1)
- Ranu Samiaji, (2015), *Harmonization of the Authority of State Institutions in Combating the Crime of Illegal Fishing in Indonesian Waters*, *Collection of Student Journals of the Faculty of Law*, 1 (22)

- Ridwan Lasabuda, (2013), Theoretical Review of Coastal and Marine Area Development from the Perspective of the Archipelagic State of the Republic of Indonesia, *Platax Scientific Journal*, 1 (2)
- Siti Munawaroh, (2019), Implementation of Sanctions for Sinking Foreign Vessels Engaged in Illegal Fishing by the Indonesian Government (International Law Perspective), *Mimbar Yustitia*, 3 (1)
- Sri Dwi Retno Ningsih, Supanto, and Emmy Latifah, (2018), Corporations as Actors of Fisheries Crime in Indonesia, *Journal of Legal Dynamics*, 18 (2)
- Sulistiyawan Doni Ardiyanto, Eko Soponyono, and Achmad Sulchan, (2020) Judgment Considerations Policy in Decree of the Court Criminal StatementBased On Criminal Destination, *Jurnal Daulat Hukum*, 3 (1)
- Supriyono, (2020), Criminology Study of Crime of Fencing the Stolen Goods, *Jurnal Daulat Hukum*, 3 (1)
- Zebua & Ramli, (2014), Analysis of the Influence of Number of Fleets, Number of Fishermen, GDP, and Investment on Fisheries Production in the Nias Region (Panel Data Analysis), *Journal of Economics and Finance*, 2 (8)