

Conference Paper

Law Enforcement on Illegal Fishing of Illegal Foreign Vessels Within EEZ of Indonesia

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Abstract

Indonesia is a country with a vast archipelago of land and sea. The number of territorial waters owned by Indonesia resulted in the number of fish that are very feasible to be consumed to be caught by illegal fishers. Indonesia has been a frequent victim of illegal fishing events, and repeatedly Indonesia has also arrested and sentenced severe punishment to foreign illegal fishers. The research aims to understand and analyse further about the implications of legal enforcement on illegal fishing by foreign fishing vessels within Indonesia's exclusive economic zone. By using the normative legal research, the author found that the result of the research shows that Indonesian Government has made a proper regulation and appropriate law enforcement to combat the illegal fishing in the Indonesia's Exclusive Economic Zone. In the research, it shows that there are many factors that make a lot of illegal fishing are still happening. Although Indonesian Government has made a proper law, there are still some law enforcers who did not execute their tasks accordingly. Indonesia has ratified the UNCLOS 1982 based on Law No. 17 Year 1985 and it makes the UNCLOS 1982 has become a binding law for Indonesian Government. Pursuant to Law No. 5 Year 1983 on Exclusive Economic Zone (EEZ), it stated on the sovereignty of the Republic of Indonesia's territorial waters, and therefore it is illegal for foreign fishing vessels to fish around the Indonesia's Exclusive Economic Zone without any permit. The research suggests that Indonesian Government should make a completion of fishery licensing system and mechanism. And also Indonesian Government must make more patrols around the Indonesia's Exclusive Economic Zone to make a more preventions towards the illegal fishers.

Keywords: illegal fishing, Indonesia's exclusive economic zone, law enforcement, foreign fishing vessels

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1. Introduction

Indonesia is a country with a vast archipelago of land and sea [1]. According to the record of the Indonesian Forum for the Environment, Indonesia is the country which well-known as the largest archipelagic country all over the world, which own 17,480 islands with

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95,181 km of coastline. Under the United Nations Convention on the Law of the Sea (UNCLOS) 1982, Indonesia has sovereignty over 3.2 million km² of waters comprising of 2.9 million km² of archipelagic waters and 0.3 million km² a territorial sea.

As country with numerous seas, Indonesia has been a frequent victim of illegal fishing events, and repeatedly Indonesia has also arrested and sentenced severe punishment to foreign illegal fishers. But that does not make the foreign fishermen deterrent or afraid to catch fish in Indonesia. The recent case occurred in Ambon, two foreign fishing vessels caught illegally fishing in Maluku waters and were destroyed in the waters of Mamala-Morela State, Leihitu District, Ambon Island, Central Maluku on April 1st, 2017 [2]. This proves that many foreign fishermen still want to catch fish illegally in Indonesia despite the many incidents that make the Indonesian government provide severe punishment for the perpetrators [3].

The large number of illegal fishing events made the government and people of Indonesia suffered huge losses. Sources of fisheries in Indonesia are one factor to develop the nation's prosperity. The fish can be used for consumption as a source of protein, and can also be sold as a source of income for the people and government [4]. The presence of Minister of Maritime Affairs and Fisheries of Indonesia, Susi Pudjiastuti, makes the illegal fishing practitioners more frequent, this is because minister Susi is very actively to combat the illegal fishing practitioners, although so many similar events often occur.

There are still many cases of illegal fishing because Indonesian government is still not maximally in supervising the waters in Indonesia. There is no maximum security in Indonesia that makes the illegal fishers are afraid to enter the territory of Indonesia [5].

1.1. Research problem

From the discussion above, the researcher formulates the research problem, namely: what are the implications and law enforcement towards illegal fishing within Indonesia's Exclusive Economic Zone done by foreign fishing vessels?

1.2. Objectives of the research

The objectives of the research are to understand and analyse further the implications and law enforcement towards illegal fishing by foreign fishing vessels within Indonesia's Exclusive Economic Zone.

1.3. Law enforcement

Law enforcement is a preventive act taken by every law enforcer [6]. It all aims to get legal certainty. It is similar in maintaining the sovereignty of maritime. Law enforcement is also an attempt to actualize the value of justice, legal certainty as well as social benefit to become a reality. It could be said, law enforcement is the essence of materializing ideas process [7].

According to Black's Law Dictionary, the definition of law is, "the regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society; the legal system (respect and obey the law)" [8].

Aside of that, the Dictionary also define "the enforcement" as, "an act or process of compelling compliance with a law, mandate, command, decree, or agreement. Enforcement Power is the authority by which Congress may enforce a particular constitutional amendment's provisions by appropriate legislation." [9].

The Law Enforcement itself defines as a preventive act taken by every law enforcer. It all aims to get legal certainty. It is similar in maintaining the sovereignty of maritime. Law enforcement is also an endeavor to actualize the justice, legal certainty as well as social benefit to become a reality. Then law enforcement is in essence a process of materializing ideas.

To enforce the law in illegal fishing, Indonesia has ratified the United Nations Convention on the Law of the Sea (UNCLOS) 1982 with Law No. 17 Year 1985. Before ratifying the Convention, Indonesia already has Law No. 5 Year 1983 concern on the Exclusive Economic Zone of Indonesia. As stated in Article 3, Paragraph 1 of the Law on Exclusive Economic Zone of Indonesia states that if the Exclusive Economic Zone of Indonesia overlaps with other countries whose beaches are facing each other or side by side with Indonesia, the boundary is settled by agreement. Indonesia has made 7 Exclusive Economic Zone border agreements with seven neighboring countries of Indonesia [10].

Indonesia as a State that has Exclusive Economic Zone makes many illegal fishers tends to do the illegal fishing more due to Indonesia's Exclusive Economic Zone that has a lot of good quality of fish [11]. Aside of UNCLOS 1982, there is the International Plan of Action which aims to Deter, Prevent and Eliminate Illegal Unreported and Unregulated Fishing (IPOA-IUU) [12]. It is made within the framework of the 1995 Code of Conduct for Responsible Fisheries (CCRF) and is not binding, but the Food and Agriculture Organizations (FAO) implementing IPOA-IUU in their respective national policies through the National Plan of Action (NPOA) of IUU Fishing [13]. The underlying consideration of the

IPOA-IUU is the concern about the increasing IUU Fishing, so the FAO drew up a global action plan to deal with it [14].

IPOA-IUU Fishing as a voluntary international instrument is expected to be a guide for countries in preventing, reducing and eliminating IUU Fishing [15]. IPOA-IUU Fishing aims to prevent and eliminate IUU Fishing by providing guidance for all countries to develop comprehensive, transparent and also effective steps and in collaboration with competent regional fisheries management organizations [16].

1.4. Illegal fishing

The “illegal act” can be defined an act or omission that violates any law and order, or any rule or regulation having the force of law [17]. In Black’s Law Dictionary the word illegal means forbidden by law, unlawful (prohibited by law or invalid [18]. Thus, illegal fishing is a series of harvesting and transporting activities conducted illegally because they do not have the consent of the authorities [19]. The acts contrary to the applicable law and is seen as an act that may damage the sea. Thus it can be said that illegal fishing includes the destruction of sea that may result in the loss of both aspects of the Economic, ecological and socio-cultural.

Illegal fishing is the activity that is:

1. Conducted by a foreign person or ship on water which becomes the jurisdiction of a country without the consent of that country or contrary to applicable laws and regulations.
2. Contrary to applicable national regulations or international obligations.
3. Conducted by the ship raising the flag of a country that is a member of a regional fisheries management organization yet operating not in accordance with the preservation and management requirements adopted by that organization or applicable international legal provisions [20].

1.5. Causes of the occurrence of illegal fishing

The problem of illegal fishing is still often happening in the waters of Indonesia. Illegal actions in fishing lead to significant collateral damage to ecosystems. Only solutions of

illegal fishing problems will result in compliance with these broader ecosystem management measures [21]. Additionally, as part of a step to explore ecosystem-based management, unreported haul estimates have proven important for balancing ecosystem models.

From the rise of illegal fishing in Indonesian marine waters, it can be seen that generally there are two driving factors that are part of the cause of illegal fishing: Internal and external factors:

1.6. Internal factors (Perspective of Indonesian government)

1.6.1. Status of fishery crisis and over fishing

As one of the 3 countries with the largest fishery production in the world, this makes an advantage for Indonesia to continue to develop the fishery industry in order to continue to increase. But unfortunately, the stages to achieve the target are still hampered by some obstacles, one of which is the optimization that is not supported by the availability of a good environment and also management of the marine ecosystem is lacking. Moreover, fishery activities continue to be boosted by massive production / over-fishing exploitation, causing degradation of the number of fish and also the destruction of territorial waters of Indonesia. But it still has not made the perpetrators stop because of the impetus of a large global fish needs.

1.6.2. Imbalanced comparison between water and law enforcement instruments

Reflecting on the data obtained by MSY (Maximum Sustainable Yield), which in these vast Indonesian waters, it is unbalanced with patrols / guards done by law enforcers, resulting in the lack of action against illegal fishing. Whereas in fact, it can be viewed from reality and empirical, there are 3 areas that become subscriptions and prone to looting fish in the Indonesian ocean, namely Natuna Islands are adjacent to the South China Sea, northern waters next to North Sulawesi bordering the Pacific Ocean, and the Arafuru Sea waters.

Calculation of patrol operation pattern with assumption of radar surveillance capability = 20 Miles radius, which means for all three aquatic areas required minimum 45 patrol boats guard 24 hours continuously (to operate it, 60: 45 operation vessels and 15 maintenance vessels and improvement). In comparison, 3:1, or cycle in a year, which are

75 percent operating time and 25 percent improvement. This impact also causes the occurrence of illegal fishing that continues to grow in Indonesia.

1.7. Exclusive economic zone

In Article 55 of the 1982 United Nations Convention on the Law of the Sea there is a definition of an Exclusive Economic Zone, and it may be interpreted that the Exclusive Economic Zone is a sea lane located outside and adjacent to its territorial sea, where the sea lane adheres to a special legal regime set out in Chapter V of United Nations Convention on the Law of the Sea 1982 [22]. Article 57 of the 1982 United Nations on the Law of the Sea stipulates that every country with a coastal area shall have the right to determine its Exclusive Economic Zone. However, the specified distance should not exceed 200 nautical miles measured from the same line used to measure the width of its territorial sea [23].

In the provisions of Article 56 of the 1982 United Nations Convention on the Law of the Sea, it is stipulated that in an Exclusive Economic Zone, coastal states have sovereign rights for the purpose of exploration, exploitation, conservation and management of natural, biological and non-biological resources from waters on the seabed and from marine and subsoil and in respect of other activities for the purpose of exploration and exploitation of such economic zones, such as energy production from water, currents and wind [24].

2. Method

2.1. Type of research

The type of the research is normative legal research, one sort of legal research prominent in professional legal writings, such as handbooks, monographs, commentaries, as well as textbooks of law that implements a specific legal method consisting in the systematic, analytically evaluative exposition of the substance of private law, Indonesian law, international law, United Nations Convention on the Law of the Sea 1982, etc. The author is focusing on the regulations, and also other books related to the title. The case approach is conducted by reviewing the case related to the issues [25].

The data would be analysed systematically through juridical qualitative. Juridical qualitative means it would be connected with the principle of law, convention and other

related regulations. The method of research that is used in this paper is a qualitative research.

3. Finding and Analysis

3.1. Laws and regulations applicable in law enforcement in the Indonesia's exclusive economic zone (Preventive measures)

Marine Security Agency and its Role in Eradicating Illegal Fishing based on Article 59 Paragraph (3) of Law No. 32 of 2014 on Marine regulate the establishment of the Marine Security Agency. The Marine Security Agency (Bakamla) is a non-ministerial government institution under the President [26]. which has the main duty of conducting security and safety patrols in the territorial waters of Indonesia and the jurisdiction of Indonesia [27].

3.1.1. Law enforcement of IUU fishing in UNCLOS 1982

In 1985, through Act No. 17/1985, Indonesia ratified Law of the Sea Convention 1982 (1982 Sea Law Convention) or better known as UNCLOS 1982, it means that Indonesia has recognized that the articles in UNCLOS 1982 have become positive law in Indonesia. Therefore, in view of the territorial waters and the sea, Indonesia should see UNCLOS 1982 as a reference of law provisions [28]. In terms of legal enforcement, including the enforcement for IUU Fishing perpetrators, UNCLOS 1982 outlines the two seas of marine territories, namely the territorial sea under sovereignty and maritime territories in which a country has jurisdiction.

In exercising its sovereign rights and jurisdiction, the coastal state shall observe the rights and obligations of other countries in the Exclusive Economic Zone. Rights and Obligations of other countries in EEZ are set out in Article 58 of UNCLOS 1982.

3.1.2. Law No. 5 Year 1983 on Indonesia's exclusive economic zone

In IEEZ, the Republic of Indonesia has and exercises sovereign rights to undertake the exploration and exploitation, management and conservation of biological and non-biological natural resources from the seabed and subsoil below and above water and other activities for the Economic exploration and exploitation of such Zones, for instance, the generation of energy from water, currents, and wind [29].

Regarding law enforcement in IEEZ, Article 13 of Law No. 5 Year 1983 provides that in order to exercise the right of sovereign, other rights, jurisdiction as well as obligations as referred in Article 4 Paragraph (1), the authorized law enforcement apparatus of the Republic of Indonesia may take appropriate law enforcement measures with Law No. 8 of 1981 on the Criminal Procedure Code.

3.1.3. Law No. 45 Year 2009 jo Law No. 31 Year 2004 on fishery

Other provisions related to the exploitation of biological resources in IEEZ are regulated in Law No. 31 Year 2004 on Fisheries. According to this Fisheries Law the fishery management area of the Republic of Indonesia for fishing and / or fish cultivation includes:

1. Indonesian waters;
2. Exclusive Economic Zone of Indonesia; and
3. Rivers, reservoirs, lakes, swamps, and the other potable water pools, as well as potential fish farming areas in the Republic of Indonesia's territory [30].

3.2. Sanctions of illegal fishing (Punitive measures)

3.2.1. Law enforcement at Sea under UNCLOS 1982 subject to sovereignty

If a violation of the coastal state legislation is taking place in the territorial sea or inland waters or in the archipelagic waters of a country, then in accordance with the sovereignty granted by Article 2 of UNCLOS 1982, the coastal state may enforce its law and even its criminal law against the vessel.

3.2.2. Law enforcement in exclusive economic zone

Article 27 (5) UNCLOS 1982 explains further as refers to Chapter IX (Conservation and Protection of the Marine Environment) and Chapter V on EEZ. In the case of violations of coastal state legislation related to the exploration, exploitation, conservation and management of fisheries resources the coastal State may enforce the law and order [31].

Thus, pursuant to Article 73 of UNCLOS 1982, if a foreign ship fails to comply with the coastal state fisheries legislation in EEZ, the coastal state may board, inspect, arrest

and conduct litigation of the vessel and notify the flag state of the vessel. However, the vessel and its captured crew shall immediately be released with reasonable bonds provided to the coastal state. The penalty which imposed shall not be in the form of corporal punishment which is prison [32].

4. Conclusion and Recommendation

4.1. Conclusion

The result of the research shows that the legal enforcement upon illegal fishing by foreign fishing vessels within the Exclusive Economic Zone of Indonesia has not been conducted properly. Although the applicable laws in Indonesia have regulated the illegal fishing in detail, there are still so many illegal fishers that are fishing in Indonesia's Exclusive Economic Zone. It is also mainly because of the lack of law enforcer, lack of supervision and limited facilities provided by the Indonesian government. Based on the applicable laws, the implication of law enforcement on the foreign fishing vessels is not making the deterrent effect to the illegal fisher. It does not make the illegal fishers feel afraid to enter the Indonesia's Exclusive Economic Zone.

4.2. Recommendation

The government must make a completion of fishery licensing system and mechanism. The number of fishing vessels permitted to operate in a fishing area should not exceed the amount of allowable catch in order for the fishing business to be profitable and sustainable.

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