

LEGAL ENFORCEMENT FOR IUU FISHING IN INDONESIAN SOVEREIGNTY AND JURISDICTION: A CASE ANALYSIS OF THE CAPTURE OF FOREIGN VESSELS BY THE INDONESIAN GOVERNMENT

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Received: 2022-06-02; Reviewed: 2022-10-25; Accepted: 2022-12-09; Published: 2022-12-14

Abstract

The cases of IUU Fishing often occurred in Indonesia. This is due to the lack of supervision by the Indonesian government towards foreign vessels that are still fishing in Indonesian territorial and EEZ. IUU fishing caused huge losses to the country. One of the perpetrators of this illegal act was the Thai Silver Sea 2 ship. The ship entered Indonesian territorial waters precisely in Sabang waters, by flying the Indonesian flag to trick the Indonesian government patrolling around Sabang waters. However, gradually the Indonesian government became aware of the existence of foreign vessels which had been suspected by Indonesia for a long time because it often turned off VMS so that its existence could not be detected by the Indonesian government. This study will examine more deeply related to whether the action conducted by Silver Sea 2 Vessels violate Indonesian regulation and UNCLOS 1982? And is the legal enforcement of Illegal Unreported and Unregulated Fishing taken by Indonesian government compatible with UNCLOS 1982?. This research is a normative legal research with a statute approach, and a conceptual approach. Legal material collection techniques are carried out by examining the relevant literature, analysing various legal references relevant to the problem related to the study to be analysed further qualitatively and descriptively. The results showed that the actions of SS2 ships violated Indonesian legislation and UNCLOS 1982 and were appropriate when this case was handled by the Sabang district court.

Keywords: *Illegal Unreported And Unregulated Fishing; UNCLOS 1982; EEZ;*

1. INTRODUCTION

According to United Nations Conventions on The Law Of The Sea (UNCLOS) 1982, the total of Indonesia's marine area is 5.9 million km², consists of over 3.2 million km² territorial waters and 2.7 km² the waters of the Indonesian Exclusive Economic Zone (ZEEI), these water area does not include the runway continental shelf. This makes Indonesia as the largest archipelagic country in the world (the biggest Archipelago in the

World)¹ consisting of 17,504 islands.² Indonesia has ratified UNCLOS 1982 with Law No. 17 of 1985 concerning the Ratification of 1982 UNCLOS, making Indonesia have sovereign rights to utilize, conserve, and manage fish resources in the Indonesia's exclusive economic zone which is carried out based on applicable international requirements or standards.³ Unlike Mauritius and The United Kingdom's conflict regarding their right to fish in their historic archipelagic waters.⁴ Indonesia has sovereignty and jurisdiction over Indonesian territorial waters, as well as the authority to determine provisions on resource utilization fish, both for fishing and fish farming while increasing prosperity and justice for use as much as possible for the benefit of the nation.⁵

For Indonesia, fisheries have an important role in national development.⁶ This is due to several factors, including the number of fishermen who depend on fisheries business activities and the potential of fisheries owned by Indonesia. There are still many foreign vessels entering the Indonesian Exclusive Economic Zone to catch fish in an uncountable amount, causing a state loss of trillions of rupiah.⁷ The last case was the capture of Thailand's 2 silver sea ships conducting IUUF in Indonesian EEZ, precisely in the waters of Sabang, Riau.⁸ Silver Sea 2 is a Thai ship, fish transport vessels measuring GT.2285. This Thai fishing boat was captured by KRI Teuku Umar in Sabang Sea, Aceh, on August 12, 2015. Silver Sea 2 Vessel conducted Carrying out fish transportation without being equipped with a Fish Transport Permit (SIKPI)⁹, performing illegal transshipment in the middle of the sea¹⁰, removing fish from the territory of Indonesia without being equipped with a Fish Health Certificate for human consumption¹¹ and turn off VMS (vessel monitoring system) during sailing.¹² The capture of the silver sea 2 vessel was tried in the Sabang district court, Indonesia.¹³ It is because SS2 was captured

¹ Serli Wijaya, "Indonesian Food Culture Mapping: A Starter Contribution to Promote Indonesian Culinary Tourism," *Journal of Ethnic Foods* 6, no. 1 (2019): 1–10, <https://doi.org/10.1186/s42779-019-0009-3>.

² Software Engineering, "The Concept of Big Data Analysis for Maritime Information on Indonesian Waters Using K-Means Algorithm" 8106, no. 37 (2021): 43–52, <https://doi.org/DOI: 10.20895/INISTA.V3I2>.

³ David Maharya Ardyantara, "Blue Secure Strategy : Indonesian Maritime Security Agency (Bakamla) in Maintain Security and Safety in the Indonesian Territorial" 25, no. 2 (2021): 1762–67.

⁴ Ninne Zahara Silviani, "Implication to Status of Diego Garcia: An Enforcement of Icj Advisory Opinion Over Chagos Archipelago" 5 (2022): 400–414.

⁵ I Nengah Suastika, "Enforcement of Illegal Fishing Laws That Was Done by Foreign Ships in the Indonesian Sea Region, Viewed from International Sea Law," *International Journal of Criminology and Sociology* 9 (2020): 1164–73.

⁶ P D Rabo et al., "The Role of Fisheries Resources in National Development : A Review" 13, no. 1 (2014): 20–28.

⁷ Don Liddick, "The Dimensions of a Transnational Crime Problem: The Case of Iuu Fishing," *Trends in Organized Crime* 17, no. 4 (2014): 290–312, <https://doi.org/10.1007/s12117-014-9228-6>.

⁸ Desti Yuwastina and Sri Tunggal Pannindriya, "Life Below Water and Maritime Security," *Journal of Social and Political Sciences* 3, no. 1 (2020): 59–71, <https://doi.org/10.31014/aior.1991.03.01.147>.

⁹ A L Azhiim Tranggono, Amalia Diamantina, and Sekar Anggun Gading P, "Duties and Authority of Fisheries in the State Fisheries Management Region of the Republic of Indonesia," 2019, <https://doi.org/10.4108/eai.17-7-2019.2302913>.

¹⁰ A A Masroeri, Aulia Siti Aisjah, and Muhammad Mukhlis Jamali, "IUU Fishing and Transshipment Identification with the Miss of AIS Data Using Neural Networks IUU Fishing and Transshipment Identification with the Miss of AIS Data Using Neural Networks," 2021, 0–8, <https://doi.org/10.1088/1757-899X/1052/1/012054>.

¹¹ Robert Pomeroy et al., "Fish Wars : Conflict and Collaboration in Fisheries Management in Southeast Asia" 31 (2007): 645–56, <https://doi.org/10.1016/j.marpol.2007.03.012>.

¹² Wang Yang, Wang Yingbin, and Zheng Ji, "Analyses of Trawling Track and Fishing Activity Based on the Data of Vessel Monitoring System (VMS): A Case Study of the Single Otter Trawl Vessels in the Zhoushan Fishing Ground," no. February (2016), <https://doi.org/10.1007/s11802-015-2467-6>.

¹³ Lena Farsia, Lia Sautunnida, and M. Putra Iqbal, "The Efforts to Resolve the Case of Illegal Fishing Conducted by Foreign Fishing Vessels in the Territorial Waters of Aceh" 413, no. January 2018 (2020): 297–99, <https://doi.org/10.2991/assehr.k.200306.230.other> techniques or mechanisms are required, remembering that the ... [8] Joshua Saputra on <https://kumparan.com/joshua-saputra/illegal-fishing-dalam-aspek-hukum-internasional>, retrieved on August ...", "author": [{"dropping-particle": ""}, {"family": "Farsia"}, {"given": "Lena"}, {"non-dropping-particle": ""}, {"parse-names": false}, {"suffix": ""}], {"dropping-particle": ""}, {"family": "Sautunnida"}, {"given": "Lia"}, {"non-drop-

in Indonesian EEZ.¹⁴ The trial began in September 2015 after the pre-trial ruling came out. Indonesia won in this case. The judges of the Sabang District Court has decided that Yotin Kuarabiab who is a Thai citizen and the captain of the Silver Sea 2 has been proven to violate Article 100 jo. Article 7 paragraph (2) e (6) Law Number 31 Year 2004 as amended by Act Number 45 of 2009 concerning Fisheries. Then the judges decided the defendant was sentenced to Rp 250 million and six months in confinement. All documents, Silver Sea 2 fishing vessels, and 1,930 MT of mixed fish which had been auctioned on February 24, 2016 worth IDR 20,579 must be submitted to the state.

Illegal fishing is an illegitimate fishing activity.¹⁵ In international definition, fisheries crime is not just illegal fishing but also includes unreported fishing and unregulated fishing) or known as Illegal, Unreported, and Unregulated Fishing (IUU Fishing).¹⁶ IUU Fishing is not only economically detrimental with the value of trillions of rupiah lost, but also destroying the fishing economy in Indonesia. Besides that, it also has an impact politics of relations between countries side by side, which violates state sovereignty and threats to resource sustainability marine life. Measures that violate countries' sovereignty and threaten the sustainability of marine living resources or activities concerning fisheries are detrimental to a country's propitiation, order, or security. This deed has been regulated in the United Nations Convention on The Law Sea 1982. Therefore, Indonesia must enforce strict laws in the form of catching foreign fishermen and their boats to be processed legally¹⁷.

Indonesia as a country that has ratified UNCLOS have the authority and sovereignty to enforce laws relating to domestic interests in the territorial waters borders with other countries.¹⁸ In an attempt enforcement of the law, Indonesia must harmonize national legal provisions with the provisions of international law. Indonesia uses the following laws to resolve IUU Fishing cases Law No. 17 of 1985 concerning 1982 UNCLOS Ratification, Act No. 31 of 2004 as amended through The Law no. 45 Year 2009 concerning Fisheries, as well as Law No 32 of 2014 concerning the Ocean. Even though there has been many regulations governing IUU fishing in Indonesia, this does not reduce the number of IUU Fishing cases that happen. There are still many violations. From January to middle September 2017¹⁹, 107 illegal fishing vessel consisting of 68

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¹⁴ Sulaiman Rasyid, "Determination of the Jurisdiction of Fisheries Crime as Transnational Organized Crime" 7, no. 1 (2021): 167–88, <https://doi.org/https://doi.org/10.15294/ulj.v7i2.38805>.

¹⁵ Jade Lindley et al., "Overcoming Complexity in Illegal, Unregulated and Unreported Fishing to Achieve Effective Regulatory Pluralism Related Papers," *Marine Policy* 81 (2017): 71–79, <https://doi.org/http://dx.doi.org/10.1016/j.marpol.2017.03.010>.

¹⁶ Elizabeth R Selig et al., "Revealing Global Risks of Labor Abuse and Illegal," *Nature Communication* 13 (2022): 1612, <https://doi.org/10.1038/s41467-022-28916-2>.

¹⁷ Arif Satria and Yoshiaki Matsuda, "Decentralization of Fisheries Management in Indonesia" 28 (2004): 437–50, <https://doi.org/10.1016/j.marpol.2003.11.001>.

¹⁸ Yoyon Mulyana Darusman, Anisa Fauziah, and Boru Dwi Sumarna, "The Study of Natuna Island Dispute Between Indonesia and China, Based on UNCLOS" 499, no. Icolgas (2020): 386–94.

¹⁹ Silvia Dian Anggraini, Indra Kusumawardhana, and Iqbal Ramadhan, "The Implication of Indonesia's IUU Fishing Policy in Natuna Territorial Waters towards South China Sea Geopolitics" 7, no. 2 (2019), <https://doi.org/https://doi.org/10.18196/hi.72130>.

vessels Vietnamese-flagged foreign fisheries (KIA), 4 KIA has a Philippine flag, and 9 KIA has a flag Malaysia, while 26 other ships have Indonesian flags has been captured by the Ministry of Fisheries Supervision Vessel fleet Maritime Affairs and Fisheries (KKP).²⁰ According to the background, the author would like to examine more deeply related to whether the action conducted by Silver Sea 2 Vessels violate Indonesian regulation and UNCLOS 1982? And is the legal enforcement of Illegal Unreported and Unregulated Fishing taken by Indonesian government compatible with UNCLOS 1982.

2. ANALYSIS AND DISCUSSION

2.1 Law Enforcement Against Silver Sea 2 Ships That Commit Illegal, Unreported, And Unregulated Fishing (IUUF) in Indonesian Exclusive Economic Zone (EEZ) Under International Law And National Law

United Nation Convention on The Law of The Sea 1982 broadly differentiates the marine area into two categories where the country can implement its law against IUU Fishing, namely the sea area which is under the sovereignty and sea area where a country has jurisdiction.²¹ Marine areas that are subject to the sovereignty of a coastal country or an archipelagic state are inland waters and territorial seas or territorial waters and territorial seas.²² Whereas the sea area where a coastal country or island country has sovereign rights and jurisdiction are in exclusive economic zone and the Continental Shelf.²³ The exclusive economic zone areas which have legal status that is sui generis (unique / different).²⁴ The difference lies in the existence of the rights and obligations of coastal countries and other countries over exclusive economic zone. In contrast to in the territorial sea, where the coastal state has sovereignty, in the EEZ the coastal state only has sovereign rights.²⁵ These sovereign rights are limited to the exploration and exploitation of marine wealth both biological and non-biological resource. United Nation Convention on The Law of Sea 1982 regulates the rights and jurisdiction of coastal states in the exclusive economic zone which state that:

- a. Exploration and exploitation of marine (non-biological) resources;
- b. Make and enforce legislation which relate to the exploration and exploitation of marine resources;
- c. Construction of artificial islands and other permanent installations;
- d. Conduct marine scientific research; and

²⁰ H Joni and S H Mh, "Law Enforcement Criminal Fighting of the Fish Stealing" 3240 (2020): 45-60, <https://doi.org/10.7176/JLPG/96-07>.

²¹ Pierre Leenhardt et al., "Ocean & Coastal Management The Rise of Large-Scale Marine Protected Areas : Conservation or Geopolitics?," *Ocean and Coastal Management*, 2013, 1-7, <https://doi.org/10.1016/j.oceaman.2013.08.013>.

²² S Kyvelou, "Aspects Of Marine Spatial Planning And Governance : Adapting To The Transboundary Nature And The Special Conditions Of The Sea," *European Journal of Environmental Sciences* 8, no. 1 (2018): 31-37, <https://doi.org/https://doi.org/10.14712/23361964.2018.5>.

²³ Zou Keyuan, "China ' s Exclusive Economic Zone and Continental Shelf : Developments , Problems , and Prospects," *Marine Policy* 25, no. January 2001 (2021): 71-81, [https://doi.org/10.1016/S0308-597X\(00\)00037-3](https://doi.org/10.1016/S0308-597X(00)00037-3).

²⁴ Mark J. Valencia and Kazumine Akimoto, "Guidelines for Navigation and Overflight in the Exclusive Economic Zone," *Marine Policy* 30, no. 6 (2006): 704-11, <https://doi.org/10.1016/j.marpol.2005.11.002>.

²⁵ Tuillio Treves, "Coastal States' Rights in the Maritime Areas under UNCLOS Tullio Treves," *Braz.J. Int'l L* 12, no. 40 (2015): 40, <https://doi.org/Doi: 10.5102/rdi.v12i1.3487>.

- e. Protection of the marine environment. While the obligations of the EEZ coast state include:
 - a) Respect the presence of rights and responsibility of other countries over the economic eksklusive zone region;
 - b) determine the maximum allowable catch for biological resources in this case fisheries; and
 - c) in the case of coastal countries not being able to harvest the entire allowable catch, providing access to other countries for catch allowable surplus through prior agreements to optimize the utilization of marine resources, especially fisheries resources with the aim of conservation.

UNCLOS 1982 regulates Illegal, Unreported, and Unregulated fishing with very limited regulation.²⁶ Coastal State's Maritime zones²⁷, separated under two regimes, are Zone of Sovereignty (in internal waters, territorial sea, and archipelagic sea) and Sovereign rights (Contiguous Zone, EEZ, and Continental Shelf), mentioned fishing and its violation of fewer than ten articles and provision.

Firstly, in article 19 Points 1 and 2 (i) of UNCLOS 1982, it was mentioned that the coastal state has the authority to make sure any passage is not disturbing the peace of its territorial waters²⁸, including any fishing activities from other states. In Indonesia, it will be applied the same in its archipelagic waters. Somehow, in its sovereign rights waters, Indonesia, under Article 58 (3) and Article 62 Point (4), Every other state need to respect the coastal state's law and regulation adopted by the coastal state regarding the management of EEZ, including the licensing the fishing vessels, fishermen and their equipment.

In Further explanation, some discourse about illegal fishing emerged together in the framework of IUU Fishing Practices at the time of the CCAMLR (Commission for Conservation of Atlantic Marine Living Resources) forum on October 27 to November 7, 1997:

- 1) Illegal fishing is illegal activity in the territorial waters or EEZ of a country, or does not have permission from that country;
- 2) Unregulated fishing is an activity in territorial waters or EEZ of a country that does not comply applicable rules in that country; and
- 3) Unreported fishing is an activity in the territorial waters of a country that are not reported, both operational and vessel data and their catches.

The IUU Fishing takes place in the sea area where sovereign rights and jurisdiction belong to the coastal state.²⁹ The act was conducted by the relevant coastal state flagship

²⁶ Sri Asih Roza Nova, "Illegal, Unreported and Unregulated Fishing: The Impacts and Policy for Its Completion in Coastal West of Sumatera," *Indonesian Journal of International Law* 14, no. 2 (2017), <https://doi.org/10.17304/ijil.vol14.2.689>.

²⁷ Julia Lisztwan, "Stability of Maritime Boundary Agreements," *Yale Journal of International Law* 37, no. 1 (2011): 154-99.

²⁸ Nong Hong, "Understanding the Freedom of Navigation Doctrine and China-US Relations in the South China Sea," *Journal of Military and Strategic Studies*, no. May (2017): 1-25.

²⁹ et al Kurniaty, Rika, "The Implementation of Vessel-Sinking Policy as an Effort to Protect Indonesian Fishery Resources and Territorial Waters The Implementation of Vessel-Sinking Policy as an Effort to Protect Indonesian Fishery Resources and Territorial Waters," in *IOP Conference Series: Earth and Environmental Science* (IOP Publishing, 2018), 012038, <https://doi.org/doi:10.1088/1755-1315/137/1/012038>.

or foreign-flagged vessels. Provisions of IUU Fishing in UNCLOS were limited to but related to law enforcement at sea. The UNCLOS 1982 regulates, in general, both the sea area, which is subject to the sovereignty and the EEZ of a country.³⁰

a) Law enforcement in the sea is subject to sovereignty

If a violation of the laws and regulations of a coastal country occurs in the territorial sea of a country. The coastal state can enforce all its legal regulations including the criminal law against that vessel.³¹ This is regulated in article 2 UNCLOS 1982. Article 27 (1) UNCLOS 1982 also regulates the impact of violation conducted in the coastal state which disturbs the security of the coastal state. The authority of the coastal state will extend to enforce its law for foreign vessels that violate the coastal state's regulation in the territorial sea or archipelagic waters (fulfilling the provisions of article 27 paragraph 1) is an embodiment of territorial jurisdiction.³²

b) Law enforcement in EEZ

Article 27 (5) of the United Nations Convention on The Law of The Sea (UNCLOS) 1982 further explained and related to Chapter V of EEZ in the case of violations of coastal laws and regulations regarding exploration and exploitation of different fisheries resources if violations occur in the EEZ, especially violations of exploration, exploitation, conservation activities and management of fisheries resources.³³ The coastal state has sovereign rights to manage the exploration and exploitation, conservation, and any management of biological resources in its EEZ.³⁴ However, in violation of passage and IUU Fishing, concerning coastal state law enforcement in the EEZ, Article 73 Paragraph (2), (3) and (4) UNCLOS 1982 regulates:

(2) *The vessels caught and the crew must be immediately released after receiving a proper security deposit or another form of guarantee.*

(3) *“Coastal state penalties imposed on violations of fisheries legislation in EEZ may not include confinement if there is no reverse agreement between the states concerned or any other form of corporal punishment.”*

(4) *In the case of the interception or detention of the foreign ship, a coastal state got to immediately inform the flag state, through the appropriate channel (Diplomatic), of the actions taken and regarding any penalties then dropped.”*

³⁰ et al Pramoda, R., “Fisheries Management Policy in Indonesia’s Exclusive Economic Zone Area Fisheries Management Policy in Indonesia’s Exclusive Economic Zone Area,” in *IOP Conference Series: Earth and Environmental Science* (IOP Publishing, 2021), 012001., <https://doi.org/10.1088/1755-1315/869/1/012001>.

³¹ Yen Chiang Chang, “The Use of Force during Law Enforcement in Disputed Maritime Areas,” *Marine Policy* 124, no. April 2020 (2021): 104382, <https://doi.org/10.1016/j.marpol.2020.104382>.

³² Joanna Vince, “Policy Responses to IUU Fishing in Northern Australian Waters,” *Ocean and Coastal Management* 50, no. 8 (2007): 683–98, <https://doi.org/10.1016/j.ocecoaman.2007.05.006>.

³³ David A Balton, “Ocean Development & International Law Strengthening the Law of the Sea : The New Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks Strengthening the Law of the Sea : The New Agreement on Straddling Fish Stocks and Highly Migratory Fish,” *Ocean Development & International Law* 27, no. November 2014 (2009): 37–41, <https://doi.org/10.1080/00908329609546078>.

³⁴ James Kraska, Guillermo Ortuño Crespo, and David W. Johnston, “Bio-Logging of Marine Migratory Species in the Law of the Sea,” *Marine Policy* 51 (2015): 394–400, <https://doi.org/10.1016/j.marpol.2014.08.016>. and in particular bio-logging of marine migratory species, raises fundamental questions about the scope of authority of coastal states to regulate marine scientific research in the waters under their jurisdiction. Bio-logging involves the attachment of devices to marine animals that collect and transmit data about their movements and aspects of the local marine environment, and is now routinely used by marine scientists to support conservation programs and augment oceanographic data collection. Tagged marine life, including seabirds, marine mammals, sea turtles and pelagic fishes, may interact unpredictably with the territorial seas and exclusive economic zones (EEZs)

Therefore, based on article 73 UNCLOS 1982, if the foreign vessel does not comply with coastal state fisheries regulations in EEZ, the coastal state has the authority to board, examine, arrest, and carry out court proceedings on the vessel notify the flag state.³⁵ However, ships and crew members captured must immediately be released with reasonable bonds given to coastal countries. The penalties for foreign vessels must also not be corporal punishment, such as prison.³⁶ Thus the form of punishment for the ship and its crew is different if it occurs in the sea area, which is subject to sovereignty (EEZ).³⁷ The coastal state's authority over violations in the EEZ is limited only to enforcing laws relating to fisheries. This difference is because, in EEZ, coastal countries only have sovereign rights, not sovereignty, so the authority will be limited related to reigning the sovereign rights owned by coastal countries or archipelagic states.

The enactment of article 73 paragraph (2) requires the coastal state to directly release the confiscated vessel and the crews after the states have given a proper security deposit or any form of guarantee from the flag state. The release procedure is immediately regulated in Article 292. The procedure for releasing the vessel and its detained crew is an innovation in international marine law. However, even though Article 292 paragraph (1) requires that the security deposit or other financial guarantees be in a decent amount, UNCLOS 1982 still needs to provide details about the financial guarantee.

Article 292 of UNCLOS 1982 regulates immediate release (prompt release) after the deposit is appropriate for the ship and its crew. The article says the coastal state that does the fishing boat foreign fisheries must immediately release the ship or crew after receiving a proper guarantee. There are no provisions about implementing the amount of the security deposit that regulate either UNCLOS 1982 or national legislation. As for the determination of money, The guarantee is based on an agreement between the parties. This is stated explicitly in Article 292 of UNCLOS 1982. Therefore, there is often a difference because the amount of the security deposit set by the coastal state is too large. In contrast, other countries feel that the security deposit is too big, so the country refuses to pay security deposit. This causes the length of detention that the coastal state does to the ship and the crew of the foreign fishing vessel; that is because no agreement was reached regarding the security deposit imposed by the national courts of the coastal state.

The topic of Illegal, Unreported, and Unregulated Fishing is not only regulated in international law but also national law. It is regulated completely in Article 7 paragraph (2) e Law Number 31 the Year 2004 as amended by Act Number 45 of 2009 concerning Fisheries which states that:

“Every person conducting a business and/ or activity in fisheries management must comply with the provisions as referred to in paragraph (1) regarding fishing vessel monitoring systems”.

³⁵ Tullio Treves, “Piracy, Law of the Sea, and Use of Force: Developments off the Coast of Somalia,” *The European Journal of International Law* 20, no. 2 (2009): 399–414, <https://doi.org/10.1093/ejil/chp027>.

³⁶ Alfons Zakaria, “Imprisonment For Iuu Fishing In Indonesia ’ S Exclusive Economic Zone : Why It Should Not Be Imposed,” *Arena Hukum* 6, no. 2 (2012): 79–154, <https://doi.org/doi: 10.3249/1868-1581-7-2-schatz>.

³⁷ Muhammad Syamsu Rokhman, “Juridical Analysis Of Management Of Foreign Fishery Ship Crime Of Fisheries In The Exclusive Economic Zone (EEZ) Of Indonesia,” *International Journal Of Educational Review, Law And Social Sciences (IJERLAS)*, 2, no. 6 (2022): 777–92.

The article requires that each fishing vessel activate its monitoring system to facilitate the government to control the activities carried out by every Indonesian ship and foreign vessel operating in Indonesian waters.³⁸ In this case, it was clear that the Silver Sea 2 ships from the beginning did not have good faith. So they turned off their monitoring systems. Consequently, they could not be detected when carrying out IUUF actions in Indonesian waters. As mentioned above, the flag country is responsible for supervising its vessels that carry out fishing activities.

Article 18 paragraph 1 UNCLOS requires the state parties to take steps that are deemed necessary to ensure legal restructuring by fishing vessels that raise their flags against the steps of sub-regional / regional fisheries management organizations for close-knit fish and stock of far-off fish. Paragraph 2 contains the flag state's obligation to permit vessels that raise their flags to carry out fishing activities on the high seas by ensuring that the country can carry out its supervisory responsibilities effectively towards its vessels. This fishery crime has violated regulation No. 45 of 2009 concerning changes to Law No.31 of 2004 concerning Fisheries. This law requires that whoever has and operates an Indonesian flagship and foreign flag ship must have caliphates and slips.

Article 4 paragraph (1) ministerial regulation On fisheries No. 32 of 2016 concerning amendments to the Ministerial Regulation On Fisheries No 15 of 2016 states that Everyone who takes on the Business of Transporting Live Fish in the Fisheries Management Area of the Republic of Indonesia must have Fish Transport Vessel License (SIKPI). Ships used for live fish transportation business must comply with paragraph (1), which shall be limited to a maximum of: a. 300 (three hundred) gross tons (GT) for ships carrying live fish from fishing; and b. 500 (five hundred) GT for Live Fish Transport Vessels from the results of Fish Cultivation.

Thailand's Silver Sea 2 ships were found, after being inspected by the Indonesian government, needing complete documents for fishing in waters within the Indonesian territorial sea or EEZ. Therefore, the action of the Indonesian government was right in capturing the ship and judging it with Indonesian law because The Silver Sea2 vessel was captured in Indonesian waters in the Sabang Sea. This action is conducted following UNCLOS 1982. Precisely, article 73 allows the coastal state the right to enforce its laws in territorial sea and EEZ.

2.2 Indonesia's Effort Against Illegal Fishing in Indonesian Sea

The strategic role of Indonesia's marine as the world's largest fishery production increased because of the IUU Fishing threat and catching fish activities that damage the environment causing a reduction in the total fish populations in the territory of Indonesia.³⁹ The impact is felt in the decline in the number of catches by fishermen and fishing areas increasingly expanding into the open seas. As a result, many traditional fishermen are switching to using environmentally unfriendly fishing gear, such as

³⁸ D. M. Sodik, "Analysis of IUU Fishing in Indonesia and the Indonesian Legal Framework Reform for Monitoring, Control and Surveillance of Fishing Vessels," *The International Journal of Marine and Coastal Law* 24, no. 1 (2009): 67–100, <https://doi.org/https://doi.org/10.1163/157180808X353984>.

³⁹ Ioannis Chapsos, Juliette Koning, and Math Noortmann, "Involving Local Fishing Communities in Policy Making : Addressing Illegal Fishing in Indonesia," *Marine Policy* 109, no. October (2019): 103708, <https://doi.org/10.1016/j.marpol.2019.103708>.

trawlers, to reach the area. Handling illegal fishing requires legislation as a guideline for cracking down on the perpetrators. The Indonesian government issued Law No. 45 the Year 2009 in conjunction with Law No. 31 the Year 2004 on Fishery; this matter aims for the perpetrators of illegal fishing to be dealt with by rules.

The enactment of Law No. 45 the Year 2009 in conjunction with Law No. 31 the Year 2004 on Fishery, the various legal provisions concerning supervision is quite comprehensive, especially in terms of granting more and more strict supervisory authority, such as stopping, checking, arresting, carrying, and holding. To combat illegal fishing practices, President Joko Widodo has ordered field supervisors to act decisively, if necessary, by sinking foreign vessels that catch fish in Indonesian waters. This is certainly conducted following the rules and procedures applicable.

The law implemented by the Indonesian government in combating criminal acts in fisheries, namely Law Number. 45 the Year 2009 in combating illegal fishing crime in Indonesian waters. The process of handling cases in fishery crime by the Government of Indonesia employing the Ministry of Fisheries and Marine in coordination with the Navy, Civil Investigators, Marine security agencies, Police, and prosecutor. In realizing its commitment to eradicating illegal fishing, the Minister of Maritime Affairs and Fisheries, together with the Marine Security Agency, Navy, Police, Ministry of Finance, Ministry of Justice and Human Rights, and Local Government, strive to continue to tighten supervision. Harmonizing these stakeholders is a law enforcement action that will create a discouragement effect for the perpetrators of illegal fishing. Oversight operations at sea, both regular and combined, are now increasingly routine. Currently, the number of fleets of supervisory boats amounts to only 27 ships.

Through the Ministry of Marine and Fisheries, the ministry issued several policies to prevent illegal fishing by establishing the corps to eradicate illegal fishing. The task force consists of representatives from several agencies, the Marine and Fisheries Ministry, the unity of Presidential work for Development Supervision and Control, the Financial Transaction Reporting and Analysis Center, the Directorate General of Customs, the Ministry of Finance, the Ministry of Transportation, Central Bank, and the Police. Taskforces among them have the task to monitor the temporary cessation of capture fishery business permits, verify fishing vessels whose development is executed overseas, and calculate state losses due to illegal fishing.

The government has issued the Decree of the Minister of Marine Affairs and Fisheries No. KEP/50/MEN/2012 concerning the National Action Plan for Illegal Prevention and Control Unreported and Unregulated Fishing (IUU Fishing) to eradicate illegal fishing in Indonesia.⁴⁰ This regulation is a form of execution of the Code of Conduct for Responsible Fisheries (CCRF) agreed in 1995 by the Food And Agriculture Organization (FAO) countries on the management and development of an orderly, responsible fishery, And sustained as well as a form of implementation of international action to combat IUU Fishing as outlined in the International Plan of Action to Prevent, Deter and Eliminate

⁴⁰ Nicolas Longépé et al., "Completing Fish Monitoring with Spaceborne Vessel Detection System (VDS) and Automatic Identification System (AIS) to Assess Illegal Fishing in Indonesia," *Marine Pollution Bulletin*, no. September (2017): 0-1, <https://doi.org/10.1016/j.marpolbul.2017.10.016>.

IUU Fishing (IPOA-IUU Fishing) in 2001.⁴¹ The IPOA-IUU Fishing should be followed up by each country, including Indonesia, by preparing IUU Fishing prevention and mitigation action plans at the national level. The sinking vessel is expected to strengthen and enforce the country's sovereignty, especially at sea. The sinking vessel is not new, but it has been done since a few years ago. From 2007 to 2012, the Ministry of Marine and Fisheries, in this case, the Directorate General of Supervision of Marine and Fishery Resources Submission, drowned about 38 foreign vessels which were proven to conduct illegal fishing.

The ministry of sea and fisheries did not sink the silver sea ship. The Indonesian government captured this ship, which finally received a judge's verdict on November 20, 2017. The panel of judges at the Sabang District Court ruled that the defendant Yotin Kuarabiab, a Thai citizen and the captain of the ship, was proven to have violated article 100 in conjunction with paragraph 7 (2) e of Law Number 31 of 2004. The defendant was sentenced to a fine of Rp. 250 million, a subsidiary of six months in prison. The ship became the state's property along with the documents, the Silver Sea fishing vessel, and all fish transported in the ship were seized for the state. A total of 1,930 metric tons of mixed fish transported were auctioned on February 24, 2016, worth around Rp. 21 billion.

Attorney General Prasetyo emphasized that handing over confiscated state assets is a form of the government's seriousness in fighting fisheries crime. This success is a synergy between the Indonesian Navy, law enforcement, and the KKP. Asset recovery is not only about tracing, securing, maintaining, and confiscating assets but also regarding implementing court decisions with permanent legal force. The handover of the Rp11 billion loot ship was the decision of the Minister of Finance, Sri Mulyani Indrawati. This was conducted following Sabang Courts's Verdict, and the ship became state property.

3. CONCLUSION

The conclusion is that The actions conducted by Silver Sea 2 Vessel violate Indonesian regulations, such as ministerial regulation on fisheries No. 32 of 2016 concerning an amendment to ministerial regulation on fisheries No 15 of 2016, regulation No. 45 of 2009 concerning changes to Law No.31 of 2004 concerning fisheries. It also violates UNCLOS 1982, precisely article 73, which offers the coastal state the right to enforce its laws in territorial sea and EEZ. Turning to the law enforcement conducted by the Indonesian government, it has compatible with UNCLOS 1982 because UNCLOS has given the right to the coastal state to enforce their law toward their territorial sea EEZ. In addition, legal enforcement of IUU Fishing in a coastal country, according to UNCLOS 1982, includes the enforcement of IUU Fishing in the marine area which complies with the sovereignty of the coastal state and the sea area where the coastal state has sovereign rights or in the EEZ. ITLOS stipulates that the reasonable bond amount in the Volga Case is not much different from the value of ships, fuel, lubricants, and fishing equipment on board. So ITLOS only granted the first component of the three "bail" components set

⁴¹ Port State Measures, "UNITED NATIONS ACTIVITIES FAO Preventing , Deterring and Eliminating IUU Fishing," *Environmental Policy and Law*, 6 (2010): 262-68.

by Australia. For Indonesia to punish IUU Fishing perpetrators, it must be seen where the action took place. If in the EEZ (or even in the territorial sea), it should be subject to a fine because of corporal punishment (prison); besides not being recommended by UNCLOS 1982, it will also harm Indonesia because it must bear the living costs of the perpetrators.

Conversely, penalties in the form of reasonable bonds can minimize Indonesia's losses due to IUU Fishing, and coastal countries have the opportunity to obtain reasonable bonds from foreign vessels that violate their fisheries laws and regulations, but the country must be careful. Determination of the amount of collateral must be appropriate by not assessing the price of the vessel being held too high, including the value of the ship in determining the amount of the guarantee. The legal action taken by the Indonesian government is appropriate to provide a deterrent effect to the perpetrators of the crime of IUU Fishing.

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