



**INTERNATIONAL LAW CONCEPT
ON THE IMPLEMENTATION OF ILLEGAL
FISHING LAW ENFORCEMENT IN THE NORTH
SUMATRA'S WATERS OF INDONESIA**

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Abstract:

Indonesia's vast territorial waters with enormous marine resources as well as countless beaches and the status of an archipelago have significance for the country, because it contains outsized fisheries / biological resources. One of which is fisheries assets estimated to reach 6,167,940 tons per year which is a source of economic growth for the people, for example in the coast of North Sumatra waters. Bearing this in mind, there are several unscrupulous fishermen who practice fishing activity in inopportune manner and even violate the provisions of the law relating to illegal fishing. Broadly in the concept of the meaning of international law, a fishery crime is not only fish theft but also includes unreported fishing as well as unregulated fishing known as Illegal, Unreported and Unregulated (IUU) fishing. This include for countries that have not reported fishing amenably which will later be categorized as a crime, particularly when fishing does not obey regulations and the stipulated procedures. Therefore, law enforcement against illegal fishing is considerably essential as an effort to prevent and eradicate the crime of fishing theft.

Keywords: implementation, law enforcement, illegal fishing

1. Introduction

1.1 Background

Indonesia is known as a maritime and archipelagic state as elaborated in the 1945 Constitution Article 25a, which states that Indonesia is an archipelagic country

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characterized by the archipelago with territories, boundaries and rights stipulated by law, international law is regulated in Article 46 of UNCLOS 1982. This zone spans 5 (five) kilometers along the equator. Geostrategy Indonesia is located in a cross position between 2 (two) continents and 2 (two) oceans. The geostrategic locus between the Asian and the Australian Continent places Indonesia in the milieu of differences of both Western and Asian civilizations. Being in the middle positions of the Pacific and the Indian Ocean also makes Indonesia the international shipping lane.

In addition, Indonesia's potential, one of which is marine (fisheries) and no less important in this presentation, North Sumatra, where the marine and fisheries prospective consist of the impending of capture fisheries and aquaculture. This potential of capture fisheries consists of the budding of the Malacca Strait which is an estimated range of 276,030 tons / year and potential in the Indian Ocean of 1,076,960 tons / year. This also includes the potential of aquaculture consists of 20,000 ha of fishpond cultivation and 100,000 ha of marine culture, 81,372.84 ha of freshwater cultivation, and 155,797 ha of public waters, where the coastal area of North Sumatra has a coastline of around 1300 km consisting of the length of the East coast 545 km, the length of the West coast is 375 km, and the Nias Islands as well as the new island are about 350 km long.

Based on the prospective conditions of the fish, coupled with the opportunity to cause the crime of illegal fishing, among the factors causing the occurrence of Illegal Fishing are the fact that fish consumption is increasing, decreasing fish resources in other countries, the current fishing fleet has not been maximized, vacancies of law enforcers in conducting illegal fishing, weak supervision at sea, and feeble regulation at sea. Thus, the fishermen will catch fish with over excessive capacity in prohibited methods such as using technology that is not environmentally friendly, trawling and other illegal types, resulting in damage to the marine environment, damage to fish stocks at sea, even harming the state. Therefore, it is important to study the "International Law Concept on the Implementation of Illegal Fishing Law Enforcement in Indonesian Waters on a small scale focusing in the waters of North Sumatra".

1.2 The Formulation of the Problem

This paper is inseparable from the formulation of the problem that turns out to be the foremost concern in analyzing issues related to this theme. Thus, the problem formulation is "How is the Concept of International Law against the Implementation of Illegal Fishing Law Enforcement in the Waters of North Sumatra, Indonesia?"

1.3 The Objective of the Study

In regard to the formulation of this problem, the purpose of this article is to examine in depth concept of international law regarding the implementation of illegal fishing law enforcement in the waters of North Sumatra.

2. General Overview

2.1 Definition of Implementation and Law Enforcement

The word "implementation" in English vocabulary (See the English general dictionary, 2003, Jhon M. Echols and Hasan Shadily, Indonesian English Dictionary and English Indonesian dictionary, Jakarta, Gramedia, p. 313.) means the process of putting a decision or plan into effect or an execution. According to Budi Winarno (2020) that the notion of implementation is an action that must be carried out by a group of individuals who are stated in the completion of a predetermined goal. In line with that, Hanifah Harsono also mentioned that the notion of implementation is a process to be able to put policies into actions from politics into the administration of policy development in the framework of perfecting a program. Thus, it can be understood that implementation is an effort that must be instigated to prevent a circumstance. This key word is certainly related to the concept of the theme of this paper which is to prevent illegal fishing.

On the other hand, the word "law enforcement" consists of two words, namely "enforcement" which means efforts to carry out actions or policies, and "law" means the rules to obey. Therefore, the notion of law enforcement is an attempt to realize the ideas of justice, legal certainty, and social that puts into action. The other side of the conception of law enforcement is also one to achieve and create order, security, and peace in the community. This is both efforts to prevent and eradicate or take action after a violation of law. This law enforcement is closely related to law enforcement officers such as the police, prosecutors, judges including prison officers, where law enforcement agencies have the authority in the judicial process to supervise, arrest, examine, and sentence according to legal orders, such as the police, prosecutors, the Corruption Eradication Commission, the Supreme Court, and other authorities are in accordance with the authority regulated by law, including naval investigators.

2.2 Overview of Illegal Fishing

Illegal fishing in the territory of Indonesia has six categories, namely fishing in the territory of the Republic of Indonesia, fisheries management without permission, fishing activities using fake permits, unreported fishing activities at the port of base, bringing catches directly abroad, using illegal fishing tools, using fishing gear of the type or size that is not in accordance with the permit.

On the other hand, illegal fishing is also an illegal activity by the applicable regulations and its activities which are not reported to the relevant fisheries institutions / authorities. This undoubtedly can occur in every capture fishery activity without depending on the fishing gear used, location, target, species and exploitation and can occur in all types of fisheries, both in small scale, industrial scale as well as fisheries in national and international jurisdictional zones. Thus, illegal fishing is a crime of fishing in the sea area of a country that is carried out illegally as further explained in the following:

- 1) fishing activities performed individually or in groups including foreign vessels carried out in the territorial waters of a country that are without permission or are in violation of the applicable laws;
- 2) fishing activities carried out contrary to national and international provisions;
- 3) fishing activities carried out by ships by placing a flag of a country that is a member of a fisheries management association / organization in the regional area, but its operational activities are not in line with the provisions applied that are not in accordance with international legal provisions.

3. Method

The method used in this article is a normative juridical method. Moreover, the type of research in this study used qualitative data in order to obtain the information needed in this study by collecting secondary data, information from various print media such as books, scientific journals, websites internet, scientific reports, and documentation from related institutions in order to support the comprehensiveness of data / material from the process of completing this research. It is also to study from a juridical aspect with the statutory approach namely reviewing issues of problems based on laws and regulations both national and international, especially in the fields of marine and fisheries law. This is in line with Peter Mahmud Marzuki's statement (2011), that legal research is carried out to look for existing legal issues, and all data / material will be included in footnotes and references.

Along with that, this paper also uses data that is already available, namely secondary data which is a collection through literature studies obtained from information that are relevant to the theme in this paper, so that it can be written in the form of articles.

4. Discussion

4.1 International Illegal Fishing Law Settings

The 1982 United Nations Convention on the Law of the Sea which was ratified by Law No. 17 of 1985 concerning Ratification of the 1982 United Nations Convention on the Law of the Sea, positions Indonesia to have sovereign rights to make use of conservation and resource management fish in Indonesia's Exclusive Economic Zone (EEZ), and the high seas which are implemented based on international requirements or standards related to fisheries issues. The issue concerning this fishery that stands out is the existence of symptoms of over fishing, fish theft, and other illegal fishing actions which not only affect the state, but also threaten the interests of fishermen and fish cultivation, climate, industry, and national fisheries business.

In addition to national law, Illegal fishing is also regulated in international law, namely the UNCLOS "United Nations Convention on the Law of the Sea" which was signed on December 10, 1982 by approximately 117 countries, one of which is Indonesia. This UNCLOS regulates marine law regimes in a comprehensive manner which has an

importance for Indonesia, especially North Sumatra, because for the first time the principle of an archipelago state gained recognition from the international community (Sudarsona, 2007).

UNCLOS in agreement distinguishes this sea area with two categories in which the state can enforce its law against IUU fishing, namely the sea area under sovereignty and the sea area where a country has jurisdiction. Marine areas subject to the sovereignty of a coastal nation (archipelago) and have sovereign rights and that jurisdiction is EEZ and continental shelf. The region has a unique legal status (*sui generis*), and the uniqueness lies in the existence of the rights and obligations of coastal states and other countries over EEZ.

4.2 Principle of Sovereignty with Illegal Fishing Law Enforcement

Sovereignty is the highest authority over the government of the state, region and so on, the rule of law is the highest authority, this, in English, is called sovereignty, which means surrender of sovereignty, supreme power or authority. It is, in Latin, called *supremus* and in Arabic is called "*Daulah*" (Neta and Satriawan, 2013). In connection with this understanding of sovereignty, the broader meaning can be understood that sovereignty is the highest right and authority in a country to control an area of government or society. This is also associated to the state sovereignty to enter into relations with foreign countries, because this sovereignty is an important element for the country to be recognized for its existence on an international scale. Therefore, this country's sovereignty is one of the basic principles for the creation of peaceful international relations (Budiyono, 2014).

Along with that also in the concept of international law known as "territorial sovereignty" which means that in this territorial area jurisdiction is run by the state over people and property. Max Huber (1984), the arbitrator in the island of Palmas Arbitration stated that:

"Territorial sovereignty is sovereignty in the relations between countries that insist on independence regarding a part of the earth is the right to exercise in it, without interference from other countries, the functions of a country."

Furthermore, illegal fishing law enforcement is an effort made for all groups not to carry out illegal fishing activities in Indonesia, especially North Sumatra. Each country has full authority over its territory, both in the area of land, water and air that are in their respective sovereign territory, for example, sovereignty over the sea area is the authority owned by the state at sea in order to exercise its authority in the sovereign territory where national law is applicable if a violation occurs. Law enforcement includes activities to implement the law and take legal action against any violations / deviations committed by legal subjects. Therefore, the Indonesian government makes a fisheries court to apply the law and take legal action in the form of sanctions for foreign vessels as well as illegal fishing in Indonesian waters.

4.3. Implementation of Illegal Fishing Law Enforcement in North Sumatra Waters

The consistency of law enforcement in the sea within the territory of the Republic of Indonesia is an important aspect of the success of the pillar of sovereignty, meaning that all relevant officials including the community remain committed to implementing regulations in an effort to protect Indonesia's marine and fisheries resources, including North Sumatra's marine and fisheries resources, for example seen below is illegal fishing cases handling in Belawan.

Table 1: Data Recap of Illegal Fishing Case Handling (January-December 2017)

No	Case Type	Number	Probe	SP3	LIMP	P-21	Finished	Other Information
1	UU Perikanan (Fisheries Act)	9	-	-	2	7	9	2007

Source: Kasubdid Gakkum Dit Polairud Polda Sumut, Belawan December 2017, and developed, for 2018. In 2018 data, the related service does not become a case handling committee. This information was also obtained from the results of the interview at Kasubdik Gakkum Dit. Polairud Sumut, 12 June 2019 and for the 2019 data, the related agencies have not handled cases related to the case of the related government offices, which are still overseeing the 2019 presidential election activities. Polairud Sumut, 12 June 2019.

In addition to handling illegal fishing cases conducted by related parties, the next effort is by the sinking of ships for perpetrators of illegal fishing crimes, which can be seen in the table below.

Table. 2: Vessels Drowning of November 2014-2019

No	Vessel's Flag	Total
1	Vietnam	302
2	Philippines	91
3	Thailand	50
4	Malaysia	41
5	Indonesia	27
6	Papua New Guinea	1
7	Belize	1
8	Stateless	1
Total in November 2014-2019		516 Vessels

Note: Source, M. Ahmad Santosa, Law Enforcement of Illegal Fishing in Indonesia, <https://wn-indonesia.org/sites/default/files/presentation> of Sargas 115 Ckemenkomar% 2c May 2019, p. 13, accessed on Wednesday, January 22, 2020, was developed.

Based on the table 2 above, there are 516 vessels that were submerged by the authorities in the sinking process (*Sargas 115*) as an effort to enforce the law against illegal fishing in Indonesian seas, including in North Sumatra. To enforce law at sea, there must be a significantly large operational policy as one of the efforts to implement law enforcement for illegal fishing as this should be well integrated. Efficient implementation of sea law requires an institution to carry out security functions in the sea area, for example the Maritime Security Agency (*Bakamla*), in coordination and integration of related institutions specifically between law enforcers at sea; law enforcement officials;

legislation that is open to the public; as well as interested parties so that they do not overlap with legal arrangements and related institutions.

Another example is the local law enforcement officer of the Belawan Polairut Polda-SU which has carried out one of the law enforcement efforts for the perpetrators of the crime of illegal fishing in the area of its authority that is Belawan Sea by sinking and destroying vessels related to the perpetrators of illegal fishing crimes which is presented in the following table:

Table 3: Data is Vessel destroyed in 2017 (Belawan Polairut-North Sumatra)

No	Vessel's Name	Vessel's Nationality	Suspected's Nationality	Location of Arrest	Case Status	Information
1	KM.SLFA 2675	Malaysia	ZAW/Myanmar	ZEE Strait of Malacca North Sumatra	Inkracht No.03/Pid.Sus.PRK/2016/PN-MDN/2016	Arrested on 13-12-2015 and blown up on 1 April 2017
2	KM. SLFA 4778	Malaysia	Chia Kee Chan/Malaysia	The territorial waters of the Malacca Straits North Sumatra	Inkracht No.05/Pid.Sus.PRK/2016/PN-MDN	Arrested on 17-02-2016 and blown up 1 April 2017
3	KM.PKFA 3378	Malaysia	Terparak Insom/Thailand	ZEE Strait of Malacca North Sumatra	Inkracht No 12/Pid.Sus.PRK/2016/PN-MDN/2016	Arrested 25 July 2015 and blown up on 1 April 2017
4	KM EXTRA JOSS-III	Indonesia	Amiruddin/ Indonesia	The territorial waters of the Malacca Straits North Sumatra	Inkracht No. 13/Pid.Sus.PRK/2016/PN-MDN	Arrested on 25 July 2016 and blown up on 1 April 2017
5	KM.PKFB 1152	Malaysia	Chit Soe/ Myanmar	The territorial waters of the Malacca Straits North Sumatra	Inkracht No. 15/Pid.Sus/2016/PN-MDN/2016	Arrested on 30 July 2016 and blown up on 1 April 2017
6	KM.PKFA 8115	Malaysia	Moe Ais Swan/ Myanmar	The territorial waters of the Malacca Straits North Sumatra	Inkracht No. 526/Pid.Sus.PRK/2016/PN-MDN/2016	Arrested on 30 July 2016 and blown up on 1 April 2017
7	KM. KHF 1767	Malaysia	Ko Kyaw Soe Ais Kyaw Soe/ Myanmar	The territorial waters of the Malacca Straits North Sumatra	Inkracht No.05/Pid.Sus/PN-MDN/2016	Arrested on 25-08- 2016 and blown up on 1 April 2017

Source: Kasubdid Gakkum version Dit Polairud Polda Sumut, Belawan December 2017 and developed for 2018 data. Data for the destruction / sinking of ships in 2018 was not found in this part of the resort because the related service did not become a committee in the destruction / sinking of the ship. This information

was also obtained from the results of the interview at Kasubdik Gakkum Dit. Polairud Sumut, 12 June 2019 and in 2019, data for the destruction / sinking of ships in 2019 related to illegal fishing has not been done because the related agencies are still under the supervision of presidential elections. This information was obtained from the results of an interview at Kasubdik Gakkum Dit. Polairud Sumut, 12 June 2019.

In the effort of law enforcement as well as security at sea, in general if viewed from national legislation, the current sea security conditions are protected by these laws, including:

- 1) Law No. 1 of 1973 concerning the Indonesian Contingent Platform / RI State Gazette of 1973 No. 1, additional State Agency No. 2994;
- 2) Law No. 5 of 1983 concerning Indonesian EEZ / State Gazette of the Republic of Indonesia of 1983 No. 44, additional State agency No. 3260;
- 3) Law No. 17 of 1985 concerning Ratification of UNCLOS 1982 / RI State Gazette of 1985 No. 49, addition to the Republic of Indonesia State Institute No. 3319
- 4) Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems / Statute of the Republic of Indonesia of 1990 No 49, additional to the Republic of Indonesia Institution No. 3419;
- 5) Law No. 6 of 2011 concerning Immigration / State Gazette of the Republic of Indonesia of 1992 No. 56, additional State agency No. 5216;
- 6) Law No. 6 of 1996 concerning Indonesian Waters / RI State Gazette of 1996 No. 73, additional State Agency No 3647;
- 7) Law No. 2 of 1992 concerning Animal, fish and plant quarantine / Republic of Indonesia Republic of Indonesia Year No. 1992 5216;
- 8) Law No. 17 of 2006 concerning Indonesian Waters concerning Cancellation of Law No. 10 of 1995 concerning Customs / Statute Book No. 2006 4661;
- 9) Law No. 32 of 2009 concerning Protection and Management of the Environment / State of the Republic of Indonesia Year 2009 No. 140, additional State Agency No. 5059;
- 10) Law No. 22 of 2001 concerning Oil and Gas / RI State Gazette of 2001 No. 136, additional state agency No. 4152;
- 11) Law No. 2 of 2002 concerning the Republic of Indonesia's National Police No. 2, Additional State Agency No. 4168;
- 12) Law No. 45 of 2009 concerning Amendments to Law No. 31 of 2004 concerning Fisheries / State Gazette of the Republic of Indonesia of 2004 No. 154, Additional State Institution No. 5073;
- 13) Law No. 12 of 2008 concerning the second Amendment to Law No. 32 of 2004 concerning Regional Government / Republic of Indonesia State Gazette of 2008 No. 59, additional State Agency No. 4844;
- 14) Law No. 34 of 2004 concerning TNI / RI State Gazette of 2004 No. 127, additional State Agency No. 4439;
- 15) Law No. 26 of 2007 concerning Spatial Planning / State Gazette of the Republic of Indonesia of 2007 No. 68, additional to Republic of Indonesia State Gazette No. 4725;

- 16) Law No.1 of 2014 concerning Amendments to Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands / Republic of Indonesia State Gazette of 2014 No. 2, supplement to the State sheet No. 5490;
- 17) Law No. 17 of 2008 concerning Shipping / State Gazette of the Republic of Indonesia of 2008 No. 64, additional to Republic of Indonesia State Gazette No. 4849.

4.4 The Purpose of Law Enforcement

Basically, in law enforcement practices in Indonesia, the law is a decree, so outside of the decree there is no law, and the law is always interpreted in the written form. The nuance of law enforcement in a country cannot be separated from the continental European legal system because this continental European law is administrative. Likewise, with law enforcement against illegal fishing, one of which is the decree.

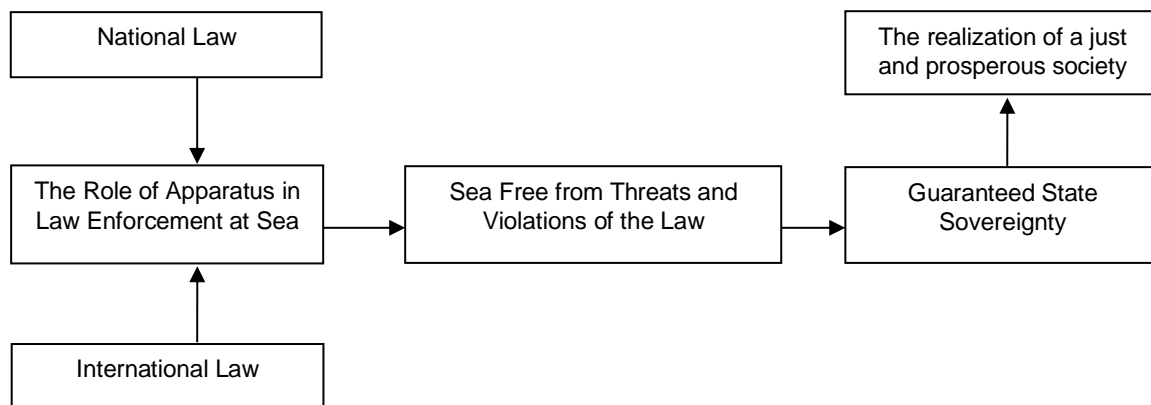


Figure 1: Illustration of Illegal Fishing Law Enforcement Objectives

5. Closing

5.1 Conclusion

Based on the aforementioned descriptions in the text, it can be concluded that Indonesia, especially North Sumatra has a prodigious potential of fisheries resources, so that the presence of these fishery resources can further improve the economy of the Indonesian, particularly the people of North Sumatra. However, in this current circumstance, there are certain unscrupulous fishermen who have taken advantage of the fishery resources by exceeding the limits that are not equitable and the worst part is violating relevant laws, so that it will damage marine resources and harm the country. Thus, the effort to enforce illegal fishing is important as an effort to control sea safety, one of which is to avoid perpetrators of fish theft crimes.

5.2 Suggestion

As for what is suggested in this article is that law enforcement officials and the public should take tangible steps in anticipating and disabling the problem of illegal fishing in

Indonesian waters, especially the policy of local authorities to overcome illegal fishing, especially in North Sumatra. The aim is for illegal fishing law enforcement can be realized in accordance with the actual intention of the law and is strongly committed to disseminating the relevant laws to the whole community, especially to fishermen who are considered to have ignored the applicable rules (laws) related to fisheries.

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