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## The Legal Basis of the Sinking of Foreign Fishing Thieves in the Indonesian Sea is Based on State Law and The UN Convention on the Law of the Marine 1982

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### **Abstract**

*A problem that often arises and has the potential to disrupt Indonesia's national economy in utilizing fisheries and marine resources is the practice of fish theft or what can be called Illegal Fishing which is part of IUUF Illegal, Unregulated and Unreported Fishing Practices by foreign fishermen and local fishermen who use fleet of foreign fishing vessels and fishing gear that can damage marine ecosystems. The fisheries potential that is owned is an economic potential that can be utilized for national economic development. Many problems that arise and have the potential to disrupt the Indonesian national economy in utilizing fisheries and marine resources are the practice of illegal fishing or IUU Illegal, Unregulated and Unreported fishing practices by fishermen using Fleets of foreign fishing vessels and fishing gear that can damage marine ecosystems are the ones that cause the most harm to the country. Meanwhile, Article 69 paragraph 4 states, in carrying out the functions as stated in paragraph 1, fisheries investigators and/or supervisors can take special action in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence. In carrying out the functions as referred to in paragraph 1, fisheries investigators and/or supervisors can take special action in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence.*

**Keywords:** Illegal fishing; ship sinking,

### **Abstrak**

*Permasalahan yang banyak muncul dan berpotensi mengganggu perekonomian nasional Indonesia dalam memanfaatkan sumber daya perikanan dan kelautan yakni praktik pencurian ikan atau yang bisa disebut dengan Illegal Fishing yang merupakan bagian dari IUUF Illegal, Unregulated and Unreported Fishing Practices oleh nelayan-nelayan asing maupun nelayan lokal yang menggunakan armada kapal ikan asing dan alat tangkap ikan yang dapat merusak ekosistem laut. Potensi perikanan yang dimiliki merupakan potensi ekonomi yang dapat dimanfaatkan untuk pembangunan perekonomian nasional. Permasalahan yang banyak muncul dan berpotensi mengganggu perekonomian nasional Indonesia dalam memanfaatkan sumber daya perikanan dan kelautan yakni praktik pencurian ikan atau IUU Illegal, Unregulated and Unreported fishing practices oleh nelayan-nelayan menggunakan armada kapal ikan asing dan alat tangkap ikan yang dapat merusak ekosistem laut adalah yang paling banyak merugikan negara. Sedangkan Pasal 69 ayat 4 berbunyi, dalam melaksanakan fungsi sebagaimana ayat 1 penyidik dan atau pengawas perikanan dapat melakukan*

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*tindakan khusus berupa pembakaran dan atau penenggelaman kapal perikanan berbendera asing berdasarkan bukti permulaan yang cukup. Dalam melaksanakan fungsi sebagaimana ayat 1 penyidik dan atau pengawas perikanan dapat melakukan tindakan khusus berupa pembakaran dan atau penenggelaman kapal perikanan berbendera asing berdasarkan bukti permulaan yang cukup.*

**Kata Kunci:** penangkapan ikan ilegal; penenggelaman kapal,

## A. Introduction

Indonesia is a country with the second largest area in Southeast Asia, Indonesia's sea area is wider than the land area, which is one-third in the form of land area and two-thirds is sea area<sup>1</sup> The total area of Indonesia is 7.8 million square kilometers, of which 2.02 million square kilometers are land, of which 3.24 is land. million square kilometers of ocean and 2.54 million square kilometers of Indonesia's Exclusive Economic Zone (EEZ)". The sea is the source of human livelihood and a place to store abundant wealth. The wealth of the seabed is rich and diverse, both biological such as fish etc. and abiotic such as petroleum, gas, etc. With the potential of Indonesian waters, this place is the target of foreign countries who want to utilize and utilize Indonesia's wealth. But on the other hand, it is a source of wealth that can be used to develop the Indonesian economy.

The great potential that Indonesia has in the world of fisheries raises problems in the world of fisheries itself. Problems that often arise and have the potential to disrupt Indonesia's national economy in the utilization of fisheries and marine resources are fish theft or illegal fishing which is part of fishing activities. IUF (illegal, unregulated and unreported fishing) carried out by foreigners and local fishermen.

The use of fishing fleets and foreign fishing gear has the potential to damage marine ecosystems.<sup>2</sup> Illegal fishing is the problem that causes the most losses to a country, especially Indonesia as an archipelagic country.

Several types of criminal acts in the field of fishing (IUU fishing: Illegal, unregulated and unreported fishing) can be distinguished as follows.<sup>3</sup> Illegal fishing, unregulated fishing, and unreported fishing.

Illegal fishing, also known as illegal fishing, causes huge losses to coastal states and islands that have traditional fishermen.

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<sup>1</sup> Frans E. Lidkadjia and Daniel F. Bassie, *Hukum Laut Dan Undang-Undang Perikanan* (Jakarta: Ghalia Indonesia, 1985).

<sup>2</sup> Elisabeth Septin Puspoayu and Peni Jati Setyowati, "Illegal, Unreported, and Unregulated Fishing as Transnational Organized Crimes," *SHS Web of Conferences* 54 (2018): 05003, <https://doi.org/10.1051/shsconf/20185405003>.

<sup>3</sup> Edi Anjarotni Dkk, *Analisis Dan Evaluasi Hukum Tentang Pengadilan Perikanan* (Jakarta: Badan Pembinaan Hukum Nasional, 2009).



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Traditional fishermen whose livelihoods fish in the waters of coastal states and islands are the most disadvantaged parties due to INNU's activities in the sovereign territory and sovereign rights of coastal states, island countries.<sup>4</sup> In addition, other consumers also suffer from not being able to enjoy seafood directly in their own countries. Macro-wise, fish stolen from Indonesia are then processed using skilled equipment so as to increase their selling price abroad.<sup>5</sup>

Indonesian coastal communities that rely on Indonesian waters for their fishing and livelihoods, as well as foreign fishermen who fish in Indonesia's exclusive economic zone, often engage in illegal acts, especially illegal fishing. Foreign fishermen are fishing illegally in Indonesian waters on a large scale and in ways that can damage marine fish habitats, such as the use of bombs that can kill fish. The Indonesian government through the Ministry of Maritime Affairs and Fisheries has implemented sanctions, one of which is the sinking of fishing boats that steal fish. The policy is contained in Article 69 paragraph (4) of Law Number 45 of 2009 concerning Fisheries. This is a legal consequence of the ratification of the United Nations Convention on the Law of the Sea in 1982 and Law Number 17 of 1985 concerning the ratification of the United Nations Convention on the Law of the Sea in 1982 which established the Unitary State of the Republic of Indonesia. has the right to use, conserve and manage fisheries resources in Indonesia's exclusive economic zone and on the high seas, in accordance with applicable international requirements or standards.

The regulation in Article 73 of UNCLOS 1982 provides that the sovereign rights in the exclusive economic zone belong entirely to the coastal state. To enforce the law due to the actions of foreign fishermen who steal and fish illegally in Indonesian territorial waters, the Government provides sanctions in the form of confiscation and sinking of foreign fishing vessels caught by fish thieves and court rulings in Indonesia. in accordance with Law Number 45 of 2009 concerning Fisheries. Sanctioning by sinking ships is an effort by the state to eradicate illegal fishing activities.<sup>6</sup> Sanction by sinking ships is one of the state's efforts to eradicate illegal fishing activities and moreover has the effect of deterring or preventing violations within the scope of the state. Region. Indonesia's borders or beyond its maritime borders can harm and threaten the country's sovereignty.<sup>7</sup> Based on the introduction

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<sup>4</sup> Septin Puspoayu and Jati Setyowati, "Illegal, Unreported, and Unregulated Fishing as Transnational Organized Crimes."

<sup>5</sup> Djoko Tribawono, *Hukum Perikanan Indonesia* (Jakarta: Citra Aditya Bakti, 2011).

<sup>6</sup> Haryanto and Joko Setiyono, "Kebijakan Peneggelaman Kapal Asing Pelaku Illegal Fishing Oleh Pemerintah Indonesia Dalam Perspektif Hukum Pidana Internasional," *Law Reform* 13, no. 1 (2017): 70, <https://doi.org/10.14710/lr.v13i1.15952>.

<sup>7</sup> Desi Yunitasari, "Penegakan Hukum Di Wilayah Laut Indonesia Terhadap Kapal Asing Yang Melakukan Illegal Fishing Mengacu Pada Konvensi United Nations Convention on Law of the Sea 1982," *Jurnal Pendidikan Kewarganegaraan Undiksha* 8, no. 1 (2020): 61–78.

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above, the problem that will be discussed in this article is the impact caused by the act of sinking foreign ships in Indonesia.

Based on the introduction above, the problem that will be discussed in this writing is the legal basis for sinking foreign vessels stealing fish in the Indonesian sea based on state law and the 1982 UN Convention on the Law of the Sea in an effort to realize the State of Indonesia as the axis of the maritime state?

## B. Literature Review

## C. Method

This research uses a type of normative legal research conducted by examining library materials or secondary data consisting of primary legal materials and secondary legal materials in the form of international sea law books, journals and research results related to illegal fishing in exclusive economic zone areas and opinions of international sea law experts. This research will be prepared using a juridical-normative type of research, namely research that examines the application of rules or norms in positive law.

This legal research seeks truth coherence, namely whether there are legal rules in accordance with legal norms, whether there are norms in accordance with legal principles, and whether actions are in accordance with legal norms or legal principles, as well as solving problems to provide prescriptions for legal issues raised.<sup>8</sup>

## D. Result and Discussion

### 1. Impact of Illegal Fishing in Indonesian Territorial Waters

Indonesia is an archipelagic country whose territory is mostly in the form of waters (sea) with enormous and diverse fisheries potential. Fisheries potential is an economic potential that can be utilized for national economic development.

The practice of fish theft or known as IUU (illegal, unregulated, and unreported fishing practice) carried out by fishermen using foreign vessels and fishing equipment that can harm marine ecosystems is one of the problems that arise and has the potential to disturb Indonesia's national economy when utilizing fisheries and marine resources.

Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries (Fisheries Law) and its provisions regarding Article 69 paragraph (1)

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<sup>8</sup> Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum," *Jurnal Justicia* 8, no. 1 (2008): 24.



and paragraph (4) authorize to sink vessels that are fishing illegally that do not have official documentation or violate Indonesian law. According to Article 69 paragraph (1) of the Fisheries Law, the role of fisheries monitoring vessels is to carry out duties that is under the fisheries management area of the Republic of Indonesia, supervision and law enforcement in the field of fisheries. According to Article 69 paragraph (4), supervisors and/or investigators in charge of fisheries can take additional actions, such as sinking or destroying foreign-flagged fishing vessels, in order to carry out their duties as referred to in paragraph (1). Provided they have ample preliminary evidence. In addition, what is meant by "destruction act" refers to the provisions of Article 76 Letter A of the Fisheries Law which states that after obtaining court approval, goods or tools used or produced from fisheries criminal acts can be confiscated or destroyed.<sup>9</sup>

The Indonesian Navy sank three Vietnamese vessels engaged in illegal fishing in Indonesian waters on December 5, 2014. The Vietnamese government launched a protest through its embassy in Jakarta following the incident. Both countries decided to reduce the growth rate of their collaboration. To prevent territorial disputes between the two countries in the future, Indonesia and Vietnam are now negotiating to determine the territorial sea boundaries of each country.<sup>10</sup>

It can be concluded from Article 69 of Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries that the Government of Indonesia can take two actions through the Authority Body, namely:

- a) Sinking of the ship through the result of a Court Decision
  - 1) The fishing boat and crew have been brought ashore by authorities;
  - 2) Fisheries courts handle lawsuits filed against vessels and crew;
  - 3) After trial and sentencing, the captured ship will be confiscated;
  - 4) Once seized, the authorities reserve the right to destroy or sell the vessel at auction.
- b). Arrested by authorities
  - 1) Fisheries supervisory vessels have the authority to monitor and regulate fisheries in the Indonesian Fisheries Management Area.
  - 2) Fisheries surveillance vessels equipped with weapons.
  - 3) Have the authority to inspect, arrest, confiscate, and detain vessels suspected of violating Indonesian territorial waters.

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9 Istanto, Y. (2015). Penenggelaman Kapal Pelaku Illegal Fishing Sebagai Upayapenegakan Hukum Perikanan Di Indonesia (Studi Putusan Nomor4/Pid.Sus-Prk/2014/Pn Tpg Pengadilan Negeri Tanjungpinang). Prosiding Seminar Nasional Multi Disiplin Ilmu & Call For Papers Unisbank (Sendi\_U): 2

<sup>10</sup> Edwin Firdaus, "Vietnam Protes Penenggelaman Kapal, Tiongkok Minta Penjelasan," *Tribun News*, 2014.



- 4) The right to apply special measures in the form of burning and/or sinking fishing vessels that show signs of fish theft.

The policies implemented by Indonesia do not contradict international law. However, there are things that need to be watched out and worried about this policy, including: There are tense political relations between Indonesia and other countries, as well as fears that other countries will take retaliatory actions for similar actions against Indonesia. Because as we know, the basic principle of law enforcement in every country is to prioritize national jurisdiction.<sup>11</sup>

## 2. The Indonesian government's efforts to end illegal fishing activities in Indonesian waters

Provisions regarding sinking ships are contained in Article 69 which reads:

- (1) Fisheries supervisory vessels have the function of monitoring and enforcing laws in the field of fisheries in the Fisheries Management Zone of the Republic of Indonesia.
- (2) Fisheries supervisory vessels as referred to in sub-article (1) may be equipped with firearms.
- (3) Fisheries supervisory vessels may arrest, inspect, confiscate, and detain vessels suspected or suspected of committing violations in the fisheries management area of the Republic of Indonesia to the nearest port for further processing.
- (4) In carrying out the functions referred to in paragraph (1), fisheries investigators or supervisors may take special action in the form of burning or sinking state-flagged fishing vessels based on sufficient preliminary evidence.<sup>12</sup>

Indonesia's policy to sink foreign vessels is a very suitable policy to be applied in Indonesia, because we know that before the policy was issued by President Joko Widodo, many foreign and domestic vessels did not have permits and illegal fishing. So that the policy of sinking ships can help the economy of the fisheries and marine industries in Indonesia.<sup>13</sup>

The handling of illegal fishing perpetrators by sinking vessels carried out by the state is considered legal under national and international law, especially Law No.1.45 of 2009 concerning fisheries and UNCLOS 1982.<sup>14</sup> In the 1982 UNCLOS there is no provision prohibiting a coastal state from sinking a ship that violates its exclusive economic zone,

<sup>11</sup> Hadiwijoyo, S. S. (2011). *Perbatasan Negara*. Yogyakarta: Graha Ilmu

<sup>12</sup> Puspoayu, E. S. (2021). TINJAUAN YURIDIS PENENGGELAMAN KAPAL ASING MENURUT UNDANG-UNDANG NOMOR 45 TAHUN 2009 TENTANG PERIKANAN . *Indonesia Law Reform Journal*: 10

<sup>13</sup> Annisa Fita Cintani, B. S. (2021). *Upaya Pemerintah Indonesia Dalam Mengatasi Pencurian Ikan Terhadap KapalKapal Asing Di Wilayah Perairan Indonesia* . NOTARIUS, 1-15.

<sup>14</sup> ahmad sofan, "PENINDAKAN DAN PENGHUKUMAN 'ILLEGAL FISHING,'" 2018, <https://business-law.binus.ac.id/2018/12/30/penindakan-dan-penghukuman-illegal-fishing/>



because the 1982 UNCLOS only provides penalties for parties accused of not including detention in a maritime state.

If any foreign vessel is detected violating Indonesian territory, the foreign vessel will be arrested. If the foreign vessel refuses inspection and flees, the fisheries investigation agency will exercise its right to chase within the exclusive economic zone (EEZ) or enter the exclusive economic zone of a third country.

Thus, based on Article 73(1) of UNCLOS 1982 regulates the right of maritime states to enforce the law in case of violations in Indonesia in accordance with Article 69 paragraph (4) of Fisheries Law Number 45 of 2009 implements various policies to overcome violations in Indonesian waters, one of which is the sinking of foreign vessels that carry out "illegal fishing".

When viewed from the policy of sinking ships by bombing, it does not contradict UNCLOS 1982, because according to Article 73 paragraph (3) UNCLOS 1982, what is protected is people, not ships. People are fined or deported without going to jail, while their boats must go through legal proceedings, whether confiscated or even sunk by the Indonesian government or not.<sup>15</sup>

Based on this discussion, the Fisheries Law regulates 3 mechanisms for sinking ships, namely:

- a. Direct subsidence at sea based on sufficient initial evidence
- b. The case of the sinking of the fishing boat is still undergoing legal proceedings and waiting for approval by the Chief Justice of the Supreme Court
- c. The sinking of the fishing boat was the result of a court decision that had permanent legal force.

These three mechanisms have a very strong legal basis and are also regulated in Law Number 45 of 2009 concerning Amendments to Law Number 31 of 2004 concerning Fisheries, Regulation of the Minister of Marine Affairs and Fisheries Number 37 / PERMEN-K / 2017 concerning Standard Operating Procedures. concerning Law Enforcement of the Task Force for the Eradication of Illegal Fishing, Circular Letter of the Chief Justice of the Supreme Court Number 1 of 2015 concerning Evidence of Vessels in Criminal Cases Related to Fishing, so that the regulation exists. Indonesia can prevent and reduce illegal fishing activities in Indonesian waters.<sup>16</sup>

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<sup>15</sup> Puspoayu, E. S. (2021). TINJAUAN YURIDIS PENENGGELAMAN KAPAL ASING MENURUT UNDANG-UNDANG NOMOR 45 TAHUN 2009 TENTANG PERIKANAN . Indonesia Law Reform Journal.: 3

<sup>16</sup> Annisa Fita Cintani, B. S. (2021). Upaya Pemerintah Indonesia Dalam Mengatasi Pencurian Ikan Terhadap KapalKapal Asing Di Wilayah Perairan Indonesia . NOTARIUS, 13



## E. Conclusion

Looking at the discussion above, therefore, the author can conclude that the law of sinking vessels for illegal fishing has been applied as a sanction given by the Government of Indonesia through the Ministry of Marine Affairs and Fisheries contained in Article 69 paragraph (4) of Law Number 45 of 2009 concerning Fisheries where the Government of Indonesia has the authority to sink fishing vessels through judicial decisions. This is strengthened based on Article 73 paragraph 1 of UNCLOS 1982 concerning the rights of maritime states to carry out law enforcement in the event of violations, the Indonesian government has the right to carry out various policies in overcoming violations of waters in Indonesia, one of which is by sinking foreign vessels that carry out "illegal fishing". Because in Article 73 paragraph 1 of UNCLOS 1982, the protected subject is the human being and not the ship. The human being is given a fine or deportation without being given a criminal confinement, while the ship can go through the legal process, whether later it will be confiscated or even sunk by the Indonesian government.

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