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**THE DROWNING POLICY THE FOREIGN FISHING VESSELS OF ILLEGAL  
FISHING BY INDONESIA GOVERNMENT IN INTERNATIONAL LAW  
PERSPECTIVE**

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**ABSTRACT**

The drowning of foreign fishing vessels of illegal fishing actors in Indonesia territory is one of law enforcement efforts to against the eradication of illegal fishing and to enforce the sovereignty of the territory of the Republic of Indonesia. It is a special act mandated in Article 69 paragraph (4) of Law No. 45 of 2009 on fisheries. This sinking policy invites controversy from neighboring countries because it is considered as an action that violates the principle of peaceful dispute resolution and is not regulated in international law. Indonesia keep continues to enforce this policy because it is considered the most effective step in reducing massive illegal fishing in Indonesian waters and has a deterrent effect for the actors.

**Keywords:** drowning policy of foreign ship, illegal fishing, international law

**A. INTRODUCTION**

The practice of illegal fishing is a serious transnational crime and is one of the most massive violations committed in the territorial waters of Indonesia. Where in addition to harming economically, socially, and ecologically, this practice is an act that weakens the territorial sovereignty of a nation.<sup>1</sup>Besides illegal fishing also has a political impact on relations between countries that coexist, threatening the preservation of marine biological resources and is an act that harms the peace, order or security of a country.<sup>2</sup>Illegal fishing by foreign fishing vessels mostly occurs in the Exclusive Economic Zone (EEZ) and also quite a lot occurs in archipelagic state waters.<sup>3</sup>Therefore, appropriate action is needed in dealing with the problem of illegal fishing in Indonesian waters.

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<sup>1</sup>Institut Teknologi Sepuluh Nopember, *Illegal Fishing dan Kedaulatan Laut Indonesia*, Surabaya: Institut Teknologi Sepuluh Nopember, 2016, hlm 1.

<sup>2</sup>I Wayan Parthiana, *Hukum Laut Internasional dan Hukum Laut Indonesia*, Bandung: Yrama Widya, 2014, hlm. 107-108.

<sup>3</sup>Ulang Mangun Sosiawan, dkk, *Laporan Akhir Penelitian hukum tentang mekanisme Penyelesaian konflik antar negara Dalam pengelolaan sumberdaya kelautan*, Jakarta : BadanPembinaan Hukum Nasional, Kementerian Hukum dan HAM RI, 2015, hlm 52.

Efforts to tackle illegal fishing in Indonesia are included in the NawaCita program of President Joko Widodo's government, in which to realize the vision of "Achieving Sovereign, Independent and Personality Based on Mutual Cooperation" will be pursued through several missions, one of which is "Realizing national security capable of maintaining sovereignty region, sustaining economic independence by securing maritime resources, and reflecting Indonesia's personality as an archipelago".<sup>4</sup>The concrete form taken by the government in this case the Ministry of Maritime Affairs and Fisheries in maintaining the country's sovereignty, as well as providing a deterrent effect in tackling illegal fishing is by sinking foreign fishing vessels entering Indonesian waters. The number of foreign vessels that have been submerged from 2014 to date is around 400 vessels. Of course, this shows a strong commitment from the Indonesian government in the fight against illegal fishing in Indonesian waters.

Indonesia's jurisdiction in the eradication of illegal fishing in Indonesian territorial waters is regulated in national legal instruments, namely through Law Number 45 of 2009 Jo Law Number 31 of 2014 concerning fisheries as well as international legal instruments namely the United Nations Convention on The Law of The Sea (UNCLOS). While the ship sinking policy in combating illegal fishing is only regulated by national law, namely the Fisheries Act. The provisions of territorial jurisdiction in international law state that a country has the authority to punish even foreigners who commit crimes or violations within their territory. This principle is the main reason that is used as the basis for a country to try a case.<sup>5</sup>If viewed from UNCLOS, other countries must obey the laws and regulations made by coastal countries as long as it does not conflict with conventions and International Law.<sup>6</sup>

In practice, the policy of sinking any foreign vessels conducting illegal fishing in Indonesian waters has caused a reaction from neighboring countries. Such as the case of the sinking of a Chinese-flagged ship carrying out illegal fishing in Natuna waters drew strong protests from the country. According to neighboring countries, the sinking of foreign fish-stealing vessels by Indonesia is the wrong step because such actions could

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<sup>4</sup>Komisi Pemilihan Umum, *Visi – Misi – Program Aksi Ir. H. Joko Widodo – drs. H.M. Jusuf Kalla Pemilu Presiden dan Wakil Presiden Tahun 2014*. [www.kpu.go.id](http://www.kpu.go.id), di akses pada 23 Desember 2017 Pukul 22.00 WIB.

<sup>5</sup>Jawahir Thontowi dan Pranoto Iskandar, *Hukum Internasional Kontemporer*, Bandung : PT Refika Aditama, 2016, hlm 158.

<sup>6</sup> Lihat Pasal 73 ayat (1) United Nations Convention on Law of the Sea.

threaten bilateral relations between the two countries. In addition, Indonesia in dealing with foreign fishermen who violate Indonesian territorial waters should take action in accordance with the provisions of international law and on humanitarian considerations and be carried out with the principle of peaceful conflict resolution. However, the Indonesian government through the Ministry of Maritime Affairs and Fisheries continues to commit to implementing this policy because it is considered ineffective in suppressing the occurrence of illegal fishing in Indonesia's marine waters because Indonesia's marine potential is an opportunity and economic potential that can be utilized for the advancement of the Indonesian economy.

## **B. RESEARCH METHOD**

The writing that will be used by the writer is analytical descriptive that is describing the applicable laws and regulations associated with legal theories, concepts, principles, norms, doctrines, books, scientific journals, jurisprudence and practice of implementing positive law concerning the above problems, because this method has The aim is to provide a systematic, factual and accurate description of the nature of the object of writing.

The author will use the normative juridical approach method which can be interpreted as legal writing using secondary data sources, namely primary legal material, secondary legal material. Because this approach focuses on secondary data, the approach is implemented by writing literature in the form of primary legal materials.

## **C. DISCUSSION**

### **1. Definition of Illegal Fishing**

Law Number 45 of 2009 concerning Fisheries states that fishing is an activity to obtain fish in waters that are not being cultivated by any means or means, including activities that use ships to load, transport, store, store, cool, handle, process, and / or preserve it.<sup>7</sup> Illegal fishing means all forms of fishing that violate Law Number 45 of 2009 and other applicable laws and regulations.

The understanding issued by the International Plan of Action (IPOA) is illegal, unreported, unregulated (IUU) initiated by FAO in the context of implementing Code of

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<sup>7</sup> Pasal 1 Undang-Undang Nomor 45 Tahun 2009

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Conduct for Responsible Fisheries (CCRF). The definition of Illegal Fishing is explained as follows.<sup>8</sup>

1. Fishing activities carried out by a particular country or foreign vessel in waters that are not merged by its jurisdiction without permission from the country that has jurisdiction or fishing activities contrary to state laws and regulations.
2. Fishing activities carried out by a fishing boat flagged one of the countries that joined as a member of a regional fisheries management organization.
3. Fishing activities that are contrary to the laws of a country or international provision.

## **2. Legal Basis for Illegal Fishing Policy**

The legal instruments that form the basis for regulating illegal fishing in Indonesia are:

1. United Nations Convention on The Law of the Sea (UNCLOS) which was ratified through Law No. 17 of 1985 concerning: Ratification of the United Nations Convention on the Law of the Sea (United Nations Convention on the Law of the Sea)
2. Law of the Republic of Indonesia Number 45 of 2009 concerning Fisheries
3. RI Law Number 5 of 1983 concerning Indonesia's Exclusive Economic Zone.
4. Law of the Republic of Indonesia Number 21 of 1992 concerning Shipping

Many cases of illegal fishing intentionally carried out by the perpetrators are accompanied by shipping crimes, maybe they are not aware that a concurrent criminal act like this will even aggravate the criminal sanctions imposed. Although the reality of this Act is not too firm in the case of illegal fishing because this Act only regulates the problem of ships used to sail, not to the substance of the activities of the voyage.

1. Law of the Republic of Indonesia Number 6 of 1996 concerning Indonesian Waters

What is meant by Indonesian waters is the Indonesian territorial sea and its archipelago and inland waters. Then explained in detail about the definition of the territorial waters of Indonesia, namely territorial waters that include the Indonesian territorial sea, archipelago waters, and inland waters. So when there are foreign ships that cross the areas as mentioned above, they must obey and

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<sup>8</sup>Nunung Mahmudah, *Illegal Fishing*, cetakan ke 1, Jakarta: Sinar Grafika, 2015), hlm 80.

comply with the regulations in force in Indonesia. So illegal fishing vessels can be ensnared by using this law.

2. Law of the Republic of Indonesia Number 31 of 2004 concerning Fisheries

This law is a substitute for Law Number 9 of 1985 concerning Fisheries because it is deemed unable to anticipate the development of fisheries development now and in the future

**3. Losses Due to Illegal Fishing**

The impact of losses from illegal fishing activities in Indonesian waters is:

1. Although Indonesian fish wealth is very abundant, but if it is continuously exploited by means of damaging by illegal fishing, then the next few years the preservation of Indonesian marine fish stocks will be exhausted, especially in the sea there has never been an activity to replant fish seeds, fish the fish that are left now are the result of the natural reproductive cycle of the fish themselves
2. Harming the State's Economy Nationally, the state is the party that is directly disadvantaged. by the existence of this illegal fishing crime. Even as reported by the economic magazine TRUST, that the economic losses caused by illegal fishing in Indonesia reached 300 trillion, nearly close to half the Indonesian state budget, we can imagine if the economic losses of that magnitude would be greater than the 20% education budget in Indonesia today.
3. Illegal fishing in Indonesian waters will threaten the preservation of national and even global fish stocks.
4. Illegal fishing in Indonesian waters will reduce the contribution of capture fisheries in the EEZ region or the high seas to the national economy (GDP).
5. Illegal fishing leads to a decrease in labor in the national fisheries sector, such as fish collection and processing. If this is not resolved as soon as possible it will reduce the chances of the younger generation of fishermen to take part in fishing efforts.
6. Illegal fishing will reduce the role of national fish landing sites (national fishing ports) and the receipt of harbor guide money. Because illegal fishing vessels generally do not land their catches at national fishing ports. This will

have a significant impact on the reduction in national income from the fisheries sector.

7. Illegal fishing will reduce income from services and taxes from legal operations
8. Illegal fishing will increase conflicts with traditional fishing fleets. The rise of illegal fishing disturbs the safety of Indonesian fishermen, especially traditional fishermen in catching fish in Indonesian waters. Foreign fishermen in addition to making illegal arrests, they also often shoot traditional fishermen who are doing.
9. Illegal fishing has a negative impact on fish stocks and fish availability, which is an important source of protein for Indonesia. Reducing the availability of fish in the local market will reduce the availability of protein and national food security. This will increase the risk of malnutrition in society, and have an impact on the government's plan to increase the value of fish consumption.

#### **4. International Legal Instruments Governing Illegal Fishing**

Coastal countries have special sovereign rights and jurisdiction in the use of fish natural resources in the Exclusive Economic Zone (EEZ). In accordance with the provisions of Chapter V of UNCLOS governing EEZ, Indonesia has issued Law Number 5 of 1983 concerning Indonesia's Exclusive Economic Zone.<sup>9</sup> In relation to law enforcement in fisheries in EEZ, Article 73 paragraph (1) UNCLOS states that:

*"Coastal countries in exercising their sovereign rights to explore, exploit, conserve and manage biological resources in their exclusive economic zones, take such actions, including climbing, checking, detaining, and carrying out legal prosecutions, which are needed to ensure the regulation of laws and regulations. the invitation he set is in accordance with this convention. "*

Therefore, coastal countries can impose the enactment of laws and regulations against violations by foreign fishing vessels that conduct fishing without permission in the EEZ owned. However, the authority to ride, inspect, detain and impose penalties on violators is necessary so that coastal states are able to carry out conservation and management of fish resources in EEZ.<sup>10</sup>

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<sup>9</sup>Dikdik Mohamad, 2014, Hukum Laut Internasional dan Pengaturannya di Indonesia, (Edisi Revisi), Refika Aditama, Bandung, hlm 165.

<sup>10</sup>Transform Aqorau, 2000, "Illegal Fishing and Fisheries Law Enforcement in Small Island Developing States: The Pasific Islands Experience", The International Journal of Marine and Coastal Law, Vo. 15, No1, hlm 40.

In carrying out its jurisdiction in the event of violations by foreign vessels conducting illegal fishing in EEZ Indonesia. The Government of Indonesia in taking action refers to Article 73 paragraph (2), (3), and (4) UNCLOS such as:

- [2]. *The captured ships and their crew must be released immediately after being given a proper security deposit or other form of guarantee*
- [3]. *Coastal punishment that is imposed for violation of fisheries laws and regulations in the Exclusive Economic Zone may not include confinement, if there is no reverse agreement between the countries concerned, or any other form of corporal punishment.*
- [4]. *In the case of capture or detention of a foreign ship, the coastal country must immediately notify the flag state through the appropriate channels, regarding the actions taken and regarding any sentences which are then handed down*

## **5. Indonesian Jurisdiction in Law Enforcement Against Illegal Fishing Perpetrators in Indonesian Waters**

Regarding jurisdiction, international law writer Rebecca M. M. Wallace states as follows:<sup>11</sup>

*“jurisdiction is an attribute of state sovereignty...jurisdiction is primarily exercised on a territorial basis...”*

Sovereignty as the highest state power is spelled out in state authorities or rights, among others in jurisdiction (making and enforcing the rule of law). Indonesia's sovereignty, jurisdiction and other rights over its waters are stipulated in a variety of National and International Law products and are carried out with the enforcement of sovereignty and law at sea. Indonesia as an independent sovereign state has jurisdiction including sovereign rights over its territory, including in the Exclusive Economic Zone (EEZ). The basis for implementing jurisdiction is:

1. territorial principle
2. national principles
3. protective principle
4. the principle of passive personality
5. universal principle

As mentioned by Wallace above, that in principle jurisdiction is exercised on a territorial basis. According to the territorial principle the enactment of the law of a

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<sup>11</sup>Chairul Anwar, 1995, *ZEE Di Dalam Hukum Internasional*, Jakarta : Sinar Grafika, ,hlm.162-163.

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country is based on the place where the act was carried out, with a note that the place must be located in an area where the law applies. The international legal regime regarding EEZ that has been developed by the international community is intended to:<sup>12</sup>

1. Protect coastal countries from the danger of the possibility of depletion of living natural resources near their shores by the activities of other countries in managing fisheries under the free sea regime. With the help that the living natural resources do not recognize the boundaries of the area and will also be able to recover, but do not rule out the possibility of depletion of these resources if not taken into account the number of catches and the frequency of capture.
2. Protect the interests of coastal countries in the field of preservation of the marine environment and marine scientific research by utilizing natural resources in the zone.

In EEZ, Indonesia has and operates:

1. The sovereign right to explore and exploit management and seek to protect, preserve natural resources, namely maintaining and maintaining the integrity of the marine ecosystem.
2. The right to carry out law enforcement is carried out by officers who deal directly, in an effort to create, preserve and maintain peace.
3. The right to carry out hot pursuits on foreign vessels that violate the provisions of Indonesia's EEZ.
4. Exclusive rights to build, permit and regulate the construction, operation and use of artificial islands, installations and buildings.
5. The right to determine scientific activities in the form of studies with / whether or not applications are submitted to the government.

So EEZ is not subject to the full sovereignty of the coastal states. Coastal countries only enjoy sovereign rights and not sovereignty. Aspects of freedom on the high seas also apply in EEZ.<sup>13</sup> In EEZ, Indonesia cannot arbitrarily apply national law, unless it is not in conflict with international law that comes from agreements, conventions, and so on. For Indonesia, EEZ is an area that has full sovereignty in relation to economic

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<sup>12</sup> P. Joko Subagyo, 1993, *Hukum Laut Indonesia*, Jakarta: Rineka Cipta, hlm 63.

<sup>13</sup> Heru Prijanto, 2007, *Hukum Laut Internasional*, Malang: Bayu Media, hlm 12.



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problems. State obligations in the form of international legal obligations, among others:<sup>14</sup>

1. Respect the rights of other countries in making voyages and flights, which are the freedoms of the countries in crossing the territory concerned, and the freedom in carrying out cables, pipes under the sea.
2. In managing one type of natural resource found in Indonesia's EEZ, such as fish. Obligations for the Indonesian government to determine the total allowable catches, so that it is known exactly how many catches are overall and the ability of the Indonesian state to work on the environment and its catches. In this case also provides opportunities for foreign fisheries to take advantage of the remaining amount of catch.

The establishment of the Ministry of Maritime Affairs and Fisheries (KKP) is basically a challenge, as well as an opportunity for the development of Indonesia's marine and fisheries sector. That is, how does this CTF place the marine and fisheries sector as one of the mainstay sectors that is able to deliver the Indonesian Nation out of a prolonged economic crisis. There are at least a number of underlying reasons.<sup>15</sup>

1. Indonesia as an archipelagic country with 17,508 islands and 81,000 km of coastline is not only the largest archipelago in the world but also stores large natural resources that have not been utilized optimally.
2. For decades, the development orientation of this country has been directed towards land, causing land resources to be drained. Therefore it is natural that marine and fisheries resources grow in the future.
3. Associated with the rate of population growth and increasing human awareness of the importance of fisheries and marine products for human health and intelligence, it is believed that it can still improve fisheries and marine products in the future. Fourth, dynamic coastal and marine areas not only have resource potential, but also have the potential for the development of various extractive development activities such as industry, settlement, conservation and so on.

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<sup>14</sup>Joko Subagyo, *Op. Cit.*, hlm 71.

<sup>15</sup>Kementerian kelautan dan perikanan, Sejarah Terbentuknya Kemntrian Kelautan dan Perikanan, <http://kkp.go.id/sejarah/>, diakses pada 23 Desember 2017 pukul 17.00 WIB.

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## 6. Policy of Sinking Foreign Vessels Actors of illegal fishing according to the provisions of National Law and International Law

Sovereignty can be interpreted as the highest power possessed by a country within its territorial borders, which includes land, sea and air. State sovereignty is limited by the territory of that country and applies within its territorial boundaries. The state is said to be the subject of international law if it has certain territorial boundaries as a geographical entity accompanied by its sovereignty and jurisdiction.<sup>16</sup>UNCLOS was used as a reference in the formation of Law Number 45 Year 2009 Amendment to Law Number 31 Year 2004 Concerning Fisheries In Article 69 paragraph (4) the law states that:

*"... fisheries investigators and / or supervisors can take special measures in the form of burning and / or sinking of foreign-flagged fishing vessels based on sufficient preliminary evidence."*

This provision enables the application of criminal sanctions in the form of sinking foreign ships operating in Indonesian waters with "sufficient preliminary evidence"<sup>17</sup>violating the laws and regulations in force in Indonesia.

The Indonesian Navy, the Sea Security Agency (*Bakamla*), and the Ministry of Maritime Affairs and Fisheries (KKP) have carried out the execution of the sinking of foreign fishing vessels which were found to be practicing illegal fishing in Indonesian waters.<sup>18</sup>This policy is intended as a strong warning to the perpetrators of illegal fishing as well as a form of Indonesia's commitment to supervision and law enforcement in the Indonesian sea area, which will continue to be carried out in order to have a deterrent effect on the perpetrators. However, the act of catching a foreign fishing vessel is carried out, still based on the rules and regulations in force, and sufficient initial evidence is fulfilled. Sufficient preliminary evidence for catching a foreign-flagged fishing vessel is evidence that suggests a criminal act in the field of fisheries by a foreign-flagged fishing vessel.

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<sup>16</sup>Dikdik Mohamad, *op.cit.*, h. 19.

<sup>17</sup>Kapal perikanan berbendera asing tidak memiliki Surat Izin Usaha Perikanan (SIUP), Surat Izin Penangkapan Ikan (SIPI) dan Surat Ijin Kapal Pengangkut Ikan (SIKPI), serta nyata-nyata mengangkut ikan di wilayah pengelolaan Perikanan NRI.

<sup>18</sup>Institut Teknologi Sepuluh Nopember, *Op.cit*, halaman 11.

Referring to Law Number 31 Year 2004 concerning Fisheries, Article 69 paragraph (1) and paragraph (4) jo. Article 76A jis. Article 38 Article 45 of Law No. 8 of 1981 (KUHP), "The policy of sinking foreign-flagged fishing vessels (foreign fishing vessels) perpetrators of illegal fishing crimes", basically is a term used for special actions in the form of destruction of evidence in the form of foreign-flagged fishing vessels that are used to commit criminal fishing (illegal fishing). The destruction can be done in a way:

1. Burned
2. Exploded
3. Drowned, by Leaking on the wall, opening the sea tap, or Sacred

Prior to the adoption of this sinking policy, the Government had made several efforts as part of handling evidence in the form of foreign-flagged fishing vessels, as well as an effort to tackle illegal fishing in Indonesia, including:

1. Managed as evidence that is used to commit a fishery crime, until the legal process gets a court decision with permanent legal force. This is faced with the problem of limited funds for maintenance, as well as limited facilities and infrastructure for the management of evidence, and others
2. Granted to the community / fishermen, research institutions, universities, and others. This effort is constrained by ships that are then "stalled" or damaged untreated due to limited knowledge in operation, technology on ships not controlled, scarcity of spare parts, or very large operational costs of the ship compared to the budget owned, and so on
3. Through the procedure of auctioning evidence with court approval. In this case the ship was captured and seized by the state, then with various considerations in accordance with the applicable laws and regulations, it was decided that the evidence in the form of a foreign-flagged fishing vessel was auctioned.
4. The problem in the field which then underlies the government is taking the policy of sinking foreign illegal fishing vessels, this is basically intended so that the ex-foreign vessels are not used to carry out illegal fishing again, breaking the chain of reusing illegal vessels in Indonesia, and shorten procedures for handling and maintaining evidence in the form of foreign-flagged fishing vessels used to commit illegal fishing, which means

simplifying the use of budgets, facilities and infrastructures, and others related to handling and maintaining evidence.

In addition to the technical reasons in the field as mentioned above, the policy of sinking foreign ships perpetrating illegal fishing crimes implemented by the Government of Indonesia, is based on the following reasons:

1. Implementation of the Fourth Pillar in Efforts to Realize Indonesia's Vision as a World Maritime Axis. Indonesia's development as an Maritime Axis, is based on 5 (five) maritime state pillars. The Fourth Pillar is based to strengthen maritime diplomacy; carried out jointly by eliminating sources of conflict at sea, such as illegal fishing, violations of sovereignty, territorial disputes, piracy, and sea pollution.
2. Efforts to Generate a Deterrent Effect and / or Shock Therapy Against the Actors of Illegal Fishing Crime Policy of sinking foreign flagged vessels perpetrators of illegal fishing crimes, by burning, blowing up and sinking foreign flagged vessels of illegal fishing offenders, progressive policies which is expected to cause a deterrent effect for the perpetrators of illegal fishing. Such policies and decisive actions appear to be effective in providing shock therapy to perpetrators, as well as being able to restore Indonesia's honor and dignity over the sovereignty of its territory.
3. Implementation of Criminal Policy in the Form of Crime Prevention and Management Policy The policy of sinking foreign flagged vessels who commit illegal fishing, is basically a form of criminal policy implementation, which is part of the Government of Indonesia's social policies, namely the overall policies carried out through legislation and agencies official, which aims to enforce the central norms of society. This policy is carried out based on and guided by the provisions of Law Number 45 of 2009 concerning Amendment to Law Number 31 of 2004 concerning Fisheries, Article 69 paragraph (1) jo. Article 76A and paragraph (4) jo. Law Number 8 of 1981 (KUHAP), Article 38 jo. Article 45. Article 38.
4. Affirmation, Embodiment and Implementation of Indonesian State Jurisdiction and Sovereignty The policy of sinking foreign-flagged vessels perpetrators of illegal fishing crimes is basically an affirmation, embodiment and

implementation of the jurisdiction and sovereignty of the Indonesian state. This policy is not only to maintain sovereignty and uphold the laws and regulations of Indonesia's marine and fisheries resources, but also as a form of Indonesia's responsibility in maintaining the safety and security of the international maritime world.

5. Extraordinary Efforts to Eradicate Illegal Fishing as the Main Crime at Sea The Indonesian government calls the crime of illegal fishing as a form of transnational organized crime (Transnational Organized Crimes - TNC). In addition, illegal fishing is categorized as a crime or a major crime at sea, which is referred to as a crime that can be accompanied or cause other crimes. Organized crime is meant because it was committed by more than one country, committed by organized crime groups, and constitutes a serious crime. Illegal fishing can also be an entry point in committing other crimes, such as human trafficking, human rights violations, drug smuggling, and others.

Indonesian jurisdiction to sink illegal fishing vessels in illegal Indonesian territorial waters is needed to minimize illegal fishing on a large scale, reduce the impact of losses caused both in protecting Indonesia's marine ecosystems and opportunities for Indonesian fishermen to use fish to advance the country's economy, and can have a deterrent effect for irresponsible stakeholders. If viewed from UNCLOS, other countries must obey the laws and regulations made by coastal countries as long as it does not conflict with conventions and international law.<sup>19</sup>

Decisive steps taken by the Government of Indonesia by sinking ships if foreign illegal fishing actors trigger the pros and cons of the international community who question the legality of the policy from the perspective of applicable International Law. The policy of sinking foreign fish stealing vessels in Indonesia is carried out by the Indonesian government in terms of the laws and regulations in force in Indonesia, which are listed in Article 64 paragraph (4) of Law Number 45 Year 2009 concerning Fisheries. If foreign fishing vessels in Indonesian waters are proven to have committed illegal fishing, then Indonesia as a Coastal State has the right to use its jurisdiction in making decisions in protecting and protecting its territorial marine wealth from irresponsible parties.

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<sup>19</sup> United Nations Convention on the Law of the Sea (UNCLOS) Article 58 (3).

This issue is also related to the regulation of the United Nations Convention on the Law of the Sea (UNCLOS), Article 73 paragraph (1) UNCLOS provides that in drowning foreign illegal fishing vessels, coastal states have the right to exercise their sovereign rights to carry out judicial processes as needed to guarantee the applicable laws and regulations and do not conflict with UNCLOS. Besides the subject protected by the convention in this case is human and not the ship.<sup>20</sup> Therefore, in Indonesia's efforts to sink ships in accordance with national legal procedures in force in Indonesia it is not in conflict with international law. In addition, Article 21 (1) of UNCLOS, expressly stipulates that coastal states can stipulate laws and regulations for cross-peaceful activities relating to the prevention of violations of the laws and regulations for fishing of coastal countries.<sup>21</sup>

## **7. Controversy over the policy of sinking foreign ships by the Government of Indonesia**

The sinking of foreign ships by the Indonesian government has caused controversy by neighboring countries or flagged foreign flag countries. The sinking of the ship is referred to as an aragonistic act and is contrary to international law that carries the principles of peaceful dispute resolution.

The reason given by neighboring countries is related to the 1969 Vienna Convention Article 27 which states that:

*" a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46"*

Article 46 states that:

- (1) A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law fundamental importance*
- (2) A violation is manifest if it would be objectively evident to any state conducting itself in the matter in accordance with normal practice and in good faith.*

Because the sinking of the ship is not mentioned in UNCLOS, Indonesia should comply and implement the provisions stipulated by UNCLOS because Indonesia has ratified UNCLOS into Indonesian legislation. And because of violations committed in the EEZ region, the applicable international legal regime in this case is UNCLOS.

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<sup>20</sup>United Nations Convention on the Law of the Sea (UNCLOS) Article 73 (2) dan 73 (3).

<sup>21</sup>United Nations Convention on the Law of the Sea (UNCLOS,) Article 21 (1), (e).

The argument from the Indonesian government is to carry Article 73 paragraph (1) UNCLOS states that:

*"Coastal countries in exercising their sovereign rights to explore, exploit, conserve and manage biological resources in their exclusive economic zones, take such actions, including climbing, checking, detaining, and carrying out legal prosecutions, which are needed to ensure the regulation of laws and regulations. the invitation it determines is in accordance with this convention."*

Therefore, coastal countries can impose the enactment of laws and regulations against violations by foreign fishing vessels that conduct fishing without permission in the EEZ owned. However, the authority to mount, inspect, detain and impose penalties on violators is necessary so that coastal states are able to carry out conservation and management of fish resources in the EEZ.<sup>22</sup> So that Indonesia in no way violates the provisions of International Law. The Criminal provisions that can be applied are adjusted to the conditions and situation of the country concerned. Because Indonesia is an archipelagic country and its territorial waters are very broad, to enforce its rights, it must take firm action against those who violate and carry out illegal fishing in territorial waters in Indonesia.

With Indonesia's arrogance, neighboring countries revealed that Indonesia had ignited the fires of conflict in the ASEAN region with the sinking policy of this ship that was not in accordance with the spirit of international law who wanted to maintain world peace. And that is stated in the opening of the Constitution of the Republic of Indonesia. if this is sustainable it will be possible to strengthen relations between the two countries and will lead to wider dispute over diplomatic relations.

The principle of peaceful settlement of disputes under international law is:

1. The Principle of Good Faith
2. Principles of Prohibition of the Use of Violence in Settlement of Disputes
3. Principles of Freedom to Choose Methods of Dispute Resolution
4. The principle of freedom of choice of law to be applied to the subject of disputes
5. Principles of Agreement of the Parties to the Dispute (consensus)

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<sup>22</sup> Transform Aqorau, 2000, "Illegal Fishing and Fisheries Law Enforcement in Small Island Developing States: The Pasific Islands Experience", The International Journal of Marine and Coastal Law, Vo. 15, No1, hlm 40.

According to the International Court of Justice, an international dispute is a situation where two countries have conflicting views regarding whether or not the obligations contained in the agreement.<sup>23</sup> A dispute is not a dispute under international law if the settlement does not have an effect on the relations of the two parties.<sup>24</sup>

Within UNCLOS protected are the rights to the crew while the ship is surrendered to the coastal states. Because the subject of international law is the crew. So that the sinking of ships is a right of the Indonesian state. because this is an effective step in tackling illegal fishing in Indonesia. this is proven by the increase in fishing income by fishermen every year.

Based on the census since 2003, the number of fishermen has decreased by 50 percent, fish stocks are running low, fish theft rates in border areas are also very high. The sea also did not get attention. Thus, Indonesia unwittingly left its nature as a maritime country. After nearly three years of intensifying law enforcement in Indonesian waters accompanied by tightening operating conditions for fishing vessels, domestic marine conditions are getting better. Fish stocks rose to 12.5 million tons. This figure increased compared to 2014 which was only 6.5 million tons. Automatic fish consumption rises to 7 kilograms per capita per year. That is, 1.75 million tons of fish consumed by the people of Indonesia per year. Indonesia's (fishery) exports also rose by more than 20 percent. In the first semester alone, there has been an increase of 30 percent from the usual 4.6 billion US dollars per year, by the middle of this year it has reached 3.8 billion US dollars. Hopefully until the end of the year can be above 5 billion US dollars.<sup>25</sup>

Other efforts by the government in upholding its maritime sovereignty, namely through the Minister of Maritime Affairs and Fisheries Susi Pudjiastuti asked the United Nations (UN) to immediately determine the practice of illegal fishing, illegal, unreported, and unregulated fishing (IUUF) as transnational organized crime (transnational organized crime) ). Because the practice of theft is organized like a mafia. According to Susi, the practice of fisheries and marine crime does not only affect one

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<sup>23</sup> Martin Dixon and Robert McCorquodale, *Cases and Materials on Internasional Law*, Blackstone, London, 1991, hlm 511.

<sup>24</sup> Huala Adolf, *Hukum Penyelesaian Sengketa Internasional*, Sinar Grafika, Jakarta, 2008, hlm 3.

<sup>25</sup> Fabian Januarius Kuwado, *Alasan Menteri Susi Tak Akan Berhenti Tenggelamkan Kapal Pencuri Ikan*, <http://nasional.kompas.com/read/2017/10/29/19290471/alasan-menteri-susi-tak-akan-berhenti-tenggelamkan-kapal-pencuri-ikan>, diakses pada 29 Desember 2017 Pukul 23.00 WIB.



country, but almost all countries in the world that have territorial waters suffer losses due to this crime. Susi said, criminal actions in these waters were very organized. Its operations are supported by fairly large organizational groups. Not only that, fish theft is not only detrimental in terms of fisheries, in practice there are many crimes and other violations that participate in this IUUF practice. "For example, crimes against humanity, slavery practices, buying and selling drugs, sharp weapons, illegal firearms, to sexual harassment that occurred on the boat," said Susi. In addition, the practice of illegal fishing, said Susi, will have an impact on the domestic economy. Contraband goods or species will be sold at a low price, thus allowing unhealthy competition. Susi appealed for the UN not to allow illegal fishing practices to occur freely in each country. This practice has not only resulted in a reduction in fish stocks in the ocean, unhealthy economic competition, to threaten the extinction of several other marine species. Minister Susi's call received support from the President of the UN General Assembly Peter Thompson. Support also came from Norway and Interpol. Norway, for example, stressed the importance of the fisheries agriculture aspect in eradicating illegal fishing practices that often occur. Norwegian Permanent Representative to the United Nations, Geir O Pedersen, revealed, 40 percent of criminal acts in the fisheries sector that occurred have depleted existing fish resources. Therefore, he hopes that the fisheries sector will begin to pay attention to sustainability so that the marine resources enjoyed today can also be enjoyed by future generations.<sup>26</sup>

#### D. CONCLUSION

Coastal States have sovereignty over fish resources in their Exclusive Economic Zone in accordance with Chapter V, Article 73, UNCLOS 1982 which regulates EEZ. Indonesia has issued Law No. 5 of 1983 concerning Indonesia's EEZ, so that Indonesia has sovereign rights to take legal actions against foreign fishing vessels conducting illegal fishing in its territorial waters. UNCLOS 1982 was used as a reference in the formation of Law No. 45/2009 concerning Fisheries in the application of criminal sanctions in the form of sinking foreign vessels conducting illegal fishing in Indonesian sea waters listed in Article 69 paragraph (4).

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<sup>26</sup>Tiara Sutari, susi Sebut Pelaku Illegal Fishing Seperti Mafia, <https://www.cnnindonesia.com/nasional/20170615185216-20-222073/susi-sebut-pelaku-illegal-fishing-seperti-mafia/>, diakses pada tanggal 29 Desember 2017 Pukul 23.15.

the policy of sinking foreign ships by Indonesia is controversial, Indonesia has an argument with reference to Article 73 paragraph (1) UNCLOS. Indonesia has the right to determine what criminal penalties are applied against illegal fishing perpetrators because UNCLOS mandates its regulation into national law, in addition to that the subject of international law is the crew. While the action against the seized ship is the right of the coast state.

Neighboring countries argue with Article 27 of the 1969 Vienna Convention where international legal provisions cannot be overridden by national law and must prioritize the use of the principles of peaceful dispute resolution. So that the policy on ship sinking is still a hot debate both domestically and internationally. However, the policies undertaken by Indonesia are reasonable given the difficulty of upholding Indonesia's sovereignty in the sea. With the sinking of this ship turned out to have shock therapy for illegal fishing and gave a deterrent effect and the results were apparent. So that Indonesia continues to be committed to continuing to implement the policy of sinking foreign ships that carry out illegal fishing in Indonesian waters.

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