

## CHAPTER I

### INTRODUCTION

#### A. Background

WALHI<sup>1</sup> study in 2008, Last Catching Fish, reveals that in the last 20 years there has been a continuity of fisheries crimes in Indonesia's marine. The origin fish thieves consistently come from 10 countries. Six of them are ASEAN members (Thailand, Philippines, Vietnam, Malaysia, Cambodia, and Myanmar) and four countries are: China, Korea, Taiwan, and Panama. Illegal fishing is consistently in 18 locations. Five locations are in west Indonesia and 13 locations in eastern Indonesia. There are no new modus, namely: doubling permit, the use of the Indonesian flag, ship name using *Bahasa* Indonesia, employing people of Indonesia, and in cooperation with Indonesian law enforcement officers.<sup>2</sup>

As an archipelagic state, illegal fishing is a very big problem for Indonesia. As a large country which has a vast sea area that is separated by islands, it is very difficult for the government to monitor and control everything that happens in the Indonesian sea waters especially the most outer regions of Indonesia. It is needed cooperation from various parties to control the whole of this region such as, from the government, law

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<sup>1</sup> WALHI (*Wahana Lingkungan Hidup Indonesia* or the Indonesian Forum for Environment) is Indonesia's largest environmental non-governmental organization which is part of the Friends of The Earth network. Its scope is broader than just environmental concerns. It stands for social transformation, people sovereignty, and sustainability of life and livelihoods.

<sup>2</sup> Kompas: Peneggelaman Kapal Asing written by M. Riza Damanik available at <http://nasional.kompas.com/read/2014/12/12/14000081/Peneggelaman.Kapal.Asing> accessed on January 12, 2015 at 12:12 p.m.

enforcement, civilians, even with foreign governments, because Indonesia is a strategic target for irresponsible person to stealing fish, especially from neighboring countries who can easily perform these criminal acts. In recent years, illegal fishing has been growing rapidly in various parts of Indonesian waters. By having weak law enforcement, eradicating illegal fishing in Indonesia was only a discourse that is unbelievably difficult to achieve. Minister Susi Pudjiastuti said that "illegal fishing is a crime that is exceptional and should be eradicated. I need the support of Governors, Regents and Mayor as leaders of the region to let us work together to eradicate this illegal fishing". It is said in the Kick-off Meeting of the National Movement rescue of Indonesia Natural Resources (SDA) Marine Sector & Launching *e-dalwas* (control and supervision) in MMAF Office, Jakarta (17/02). Events Kick-off Meeting was held by the Ministry of Maritime Affairs and Fisheries (MMAF) together with the Corruption Eradication Commission (KPK) and attended by the Governor and Head of the Department of Marine and Fisheries who came from 34 provinces all over Indonesia.<sup>3</sup>

Such situation is causing huge losses to Indonesia. Susi said catch number of a foreign vessel in our waters reach 300 tons to 600 tons per year. Just calculate Indonesia's losses. Tuna price is US \$ 1. But, they do not only catch tuna, but also shrimp, rainbow fish, red snapper. Just count Indonesia

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<sup>3</sup> Penanganan Illegal Fishing Perlu Dukungan Pemerintah Daerah (no name) available at <http://kkp.go.id/index.php/berita/penanganan-illegal-fishing-perlu-dukungan-pemerintah-daerah/> accessed on March 14, 2015 at 2:11 p.m.

harmed US \$ 15 billion per year.<sup>4</sup> This loss is only in the context of the material loss.

President Joko Widodo, widely known as Jokowi, said the problem of illegal fishing was costing the country too much money.<sup>5</sup> Based on the reason above, President Joko Widodo through Coordinator Minister for Politic, Law and Security instructs to execute the sinking of three foreign ships from Vietnam who stole the fish in the waters of Natuna, Kepulauan Riau.<sup>6</sup>

Though the government has been scuttling such vessels for years, the latest campaign started in December, when newly-elected president Joko Widodo's government [invited media to watch](#) it launch explosives at three Vietnamese ships that had been caught fishing in its territorial waters. Numerous sinkings followed, including [a Vietnamese vessel on February 10](#).<sup>7</sup>

President Joko Widodo's policies to sink foreign ship who stole fish in Indonesia water no longer be protested anymore because it is a part of Indonesia's sovereignty confirmation form.<sup>8</sup> "Therefore I instructed the ministry, the military commander, that this couldn't continue. I instructed

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<sup>4</sup> Angkatan Laut RI Tenggelamkan Kapal Asing (no name) available at [http://www.bbc.com/indonesia/berita\\_indonesia/2014/12/141205\\_indonesia\\_kapal\\_asing](http://www.bbc.com/indonesia/berita_indonesia/2014/12/141205_indonesia_kapal_asing) accessed on January 12<sup>th</sup>, 2015 at 12:04 a.m.

<sup>5</sup> Indonesia Touts Sinking of Illegal Fishing Ships by Andi Lala available at <http://www.voanews.com/content/indonesia-touts-sinking-of-illegal-fishing-ships/2554087.html> accessed on March 14<sup>th</sup>, 2015 at 4:05 p.m.

<sup>6</sup> Instruksi Presiden Jokowi Tenggelamkan Kapal Asing Ilegal Pencuri Ikan (no name) available at <http://tinoberita.blogspot.com/2014/12/Instruksi-Perintah-Jokowi-Tenggelamkan-Kapal-Asing-Pencuri-Ikan.html> accessed on March 11<sup>th</sup>, 2015 at 1:51 p.m.

<sup>7</sup> Comment: Indonesia is Sinking Illegal Fishing Boats in Dramatic Fashion (no name) available at <http://www.sbs.com.au/news/article/2015/02/20/comment-indonesia-sinking-illegal-fishing-boats-dramatic-fashion> accessed on March 14<sup>th</sup>, 2015 at 4:04 p.m.

<sup>8</sup> Instruksi Presiden Jokowi Tenggelamkan Kapal Asing Ilegal Pencuri Ikan available at <http://tinoberita.blogspot.com/2014/12/Instruksi-Perintah-Jokowi-Tenggelamkan-Kapal-Asing-Pencuri-Ikan.html> (no name) accessed on March 11, 2015 at 1:51 p.m.

them three or four weeks ago to sink ships involved in illegal fishing. Sink them! No more! But thank Allah, last Friday, we started sinking several ships," he said.<sup>9</sup> Illegal, unreported and unregulated fishing can lead to the collapse of a fishery or seriously impair efforts to rebuild stocks that have already been depleted.<sup>10</sup>

For the last few months Indonesia has been making a show of dramatically blowing up and sinking fishing boats from Vietnam –sample case-that were illegally fishing in Indonesia waters. To execute the sinking foreign ship that stole fish from Indonesia water the Indonesian Navy (TNI AL) cooperate with Ministry of Maritime Affairs and Fisheries and also Maritime Security Coordinating Board (Bakorkamla) on December 5, 2014 have sunk three ships with Vietnamese flag, namely KG 90433. ATS 005; KG 94366 TS. ATS 006; and KG 94266 TS. ATS 012 in Anamabas Water, Kepulauan Riau.<sup>11</sup>

By shooting and sinking illegal fishing ship, the execution got various responses from various perspectives such as from environmental, economic and even international law perspectives. Pros and cons responses pop up this drowning policy. Most people feel that the effort to maintain Indonesian sea sovereignty has disrupted Indonesia relations with other countries

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<sup>9</sup> Indonesia Touts Sinking of Illegal Fishing Ships by Andi Lala available at <http://www.voanews.com/content/indonesia-touts-sinking-of-illegal-fishing-ships/2554087.html> accessed on March 14, 2015 at 4:05 p.m

<sup>10</sup> International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Food and Agriculture Organization of the United Nations, Rome, 2001, p. 1

<sup>11</sup> Peneggelaman Kapal Bukan Buat Gagah-gagahan by Argianto Da Nugroho available at <http://www.tribunnews.com/nasional/2014/12/07/jokowi-peneggelaman-kapal-bukan-buat-gagah-gagahan-tapi-soal-prinsip> accessed on January 12, 2015 at 12:14 a.m

governments whose boat had been sunk.<sup>12</sup> Some countries consider that Indonesia has done un-peaceful legal actions decided by the next party. Even though what the ships have caused so much losses of Indonesia, the law enforcement must be through legal process which is in line with both municipal and International Law.

Based on the United Nation Convention on the Law of the Sea (UNCLOS), "Passage of a foreign ship shall be considered a prejudicial to the peace, good order or security of the coastal state if in the territorial sea it engages in any of the following activities:... (i) Any fishing activities"<sup>13</sup>

It is true that illegal fishing is wrongful act based on international law of the sea. Since Indonesia has been ratified this convention, Indonesia must follow the convention including the law enforcement of illegal fishing which is regulated in the convention. Based on article 73 of Law of the sea convention clearly stated that, when there is illegal fishing in Indonesia territory, Indonesia not only needs to protect its sovereignty but also has right to enforce the law:<sup>14</sup>

(1) The coastal state may, in the exercise of its sovereign rights to explore, exploit, conserve, and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this Convention.

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<sup>12</sup> Sulasi Rohingati, *Peneggelaman Kapal Asing: Upaya Penegakan Hukum Laut Indonesia*, Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal RI, Vol. VI, No. 24/II/P3DI/Desember/2014, p. 2

<sup>13</sup> Article 19 Paragraph 2 Point (i) of United Nation Convention on the Law of the Sea 1982.

<sup>14</sup> Article 73 of United Nation Convention on the Law of the Sea 1982.

(2) Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.

(3) Coastal state penalties for violations of fisheries laws and regulation in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.

(4) In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

Besides that, it needs to be remembered that Indonesia not only ratified UNCLOS but Indonesia is also one of country who ratified United Nation Charter as the highest legal source of international law. Shootings and sinking other states's ships are considered a treatment that violates the provisions of the UN Charter that binds Indonesia as a member of the UN. As stated in article 4 of Charter of the United Nations, as "peace-loving state", Indonesia must solve any conflicts peacefully. Therefore, the form of shootings and sinking foreign ships obviously not the way to resolve conflicts peacefully and is not a characteristic of a civilized country or civilized nation.

Such actions may lead to strained political relations like what happened in the Philippines with Taiwan in 2013 and the People's Republic of China (PRC) with Vietnam in the same year. If the political tension continues, it is unlikely the potential for undesirable armed conflicts may occur because we are eager to national development. Furthermore, the action conducted by the

Indonesian government is in contrary with article 2 point 3 of UN Charter which stated that “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”.<sup>15</sup>

As a country that has sovereignty, it is normal if the Indonesian government did an act in order to strengthen national resilience. In this case, the Indonesian government shoots and sinks foreign ship. However, as a UN member state that has also ratified UNCLOS, Indonesia should be able to defend the sovereignty and interests in the country without ignoring international regulations. Inconsistencies between law enforcement carried out by the Indonesian government against illegal fishing with the International provisions regarding measures to be taken in enforcing the law becomes a strong background to start research on the sinking of illegal fishing ship based on international law perspective.

## **B. Research Question**

1. How International Law of The Sea’s perspective regulates the sinking of foreign illegal fishing ship?
2. What should Indonesia do to overcome illegal fishing held by foreign ships?

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<sup>15</sup> Yordan Gunawan and Muhammad Arizka Wahyu, Kebijakan Penenggelaman Kapal oleh Pemerintah Indonesia dalam Perspektif Hukum Laut Internasional, *Proceeding Seminar Nasional Peluang dan Tantangan Menghadapi Masyarakat Ekonomi Asean (MEA): Perspektif Hukum dan Perlindungan Sumber Daya Laut*, 2015

### **C. Research Objectives**

The objectives of this research are to explain about the law enforcement of illegal, unreported and unregulated fishing committed by foreign vessels in Indonesia especially sinking the foreign vessels under the International Laws of the Sea perspective.

Besides that this research also explains about law enforcement that the Indonesian government should do to overcome illegal fishing in order to protect our nation especially our sovereignty yet still in line with international law provision.

### **D. The Advantages of Research**

#### 1. Theoretical Advantages

This research would give benefits to know about the perspective of International Law of The Sea on the sinking of foreign illegal fishing ships through related convention such as Law of the Sea Convention; Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; and other additional legislations related to this issue.

#### 2. Practical Advantages

This research would give better understanding on how International Law of The Sea regulates the law enforcement of illegal, unreported, and unregulated fishing in Indonesia. Later it would give advice to the



government on how to enforce the law in the best way besides sinking foreign vessels.

## **E. The Outline**

This undergraduate thesis consists of five chapters, namely: Chapter I Introduction, Chapter II Literature Review, Chapter III Research Methods, Chapter IV the Sinking of Illegal Fishing Ship in Indonesia Based on International Law Perspective, and Chapter V Conclusion and Suggestion.

Chapter I consists of general matters as an introduction of this undergraduate thesis. The author tries to explain about the policy of President Joko Widodo to sink illegal fishing ship in Indonesia which is not in line with international law provision as a background the author also delivers the research problem which is discussed in the next chapter. The objectives and advantages of this research are also explained in this chapter.

Chapter II, Literature Review, elaborates the meaning of illegal, unreported and unregulated (IUU) fishing, the meaning of International Law of the Sea, and some related provisions of international law of the sea.

Chapter III discusses about the research methods used on the research. This research method consists of type of research, legal materials, method of collecting data and method of data analysis. Type of this research is a normative legal research. The research uses statute approaches to conduct this study. Also this research utilizes research materials taken from some literatures including primary legal materials, secondary legal materials, and

tertiary legal materials. Then, the methods of collecting data in this research are conducted through library research, and analyzed systematically through qualitative and descriptive method.

In chapter IV the author analyzes whether the sinking of illegal fishing ship is regulated (allowed) or not based on International Law of the Sea and how International Law of the Sea regulate the law enforcement that should be done by the Indonesian government.

In the last chapter, Chapter V, the author concludes what has been discovered in previous chapters about the sinking ship and also gives the suggestions that Indonesia should do to overcome foreign illegal fishing.