

CHAPTER ONE

INTRODUCTION

A. Background of Research

Food and Agriculture Organization¹ in 2009 asserted that Indonesia still faced high practice of Illegal, Unreported, and Unregulated fishing (IUU fishing) in Indonesian waters, Indonesia's Exclusive Economic Zone (EEZ)² and high seas bordering the Indonesia's EEZ by foreign and local ships. Fish resources in some areas, particularly the western part of the Indonesian waters archipelago has over exploitation and in some cases even become unsustainable because it uses fishing methods that are not reasonable and there are many activities of illegal, unreported, and unregulated fishing.³

Indonesia is the second largest coastline in the world and two thirds of the area of the country consists of water. However compared with our neighboring countries in South East Asia, we are ranked number 5 when it comes to the export of fishery products, Thailand has only one tenth of water territories compared to Indonesia. Indonesian Minister of Marine Affairs and fisheries said that *"I do see and realize that illegal fishing is the biggest problem in*

¹ Food and Agriculture Organization is an agency of the United Nations that leads international efforts to defeat hunger. Serving both developed and developing countries, FAO acts as a neutral forum where all nations meet as equals to negotiate agreements and debate policy. FAO is also a source of knowledge and information, and helps developing countries and countries in transition modernize and improve agriculture, forestry and fisheries practices, ensuring good nutrition and food security for all.

² Exclusive Economic Zone (EEZ) is an area beyond and adjacent to the territorial sea and it shall not extend beyond 200 nautical miles from the baselines from which the breadth of territorial sea is measure.

³ Didik Mohamad Sodik, 2011, *Hukum Laut Internasional dan Pengaturannya di Indonesia*, Bandung: PT Refika Aditama, pp. 172-173

Indonesia in relation to fisheries and marine affairs".⁴ It is quite a challenge to monitor and control Indonesian maritime territory; therefore enforcement needs to be in place.

As a result of the illegal fishing practice, Indonesia suffered many types of losses. First, the loss of marine products reached Rp30 trillion a year. Second, over fishing and overcapacity have caused damage to the conservation of fish resources and the decline of fish stocks. Third, there has been serious decline in catch per unit of fishing companies and national companies. Consequently, the fishing activity in Indonesia has become not conducive because of declining fish supply. Other derivatives are due to the weakening of the competitiveness of Indonesian fishery. Fourth, local fishermen have been more marginalized as a result of competition from foreign fishermen.⁵

To combat illegal fishing practices, President Joko Widodo had ordered the supervisory officers to act decisively, if it is necessary to sink the foreign ships that conduct illegal fishing in Indonesian territorial waters.⁶ The instruction that issued by President to take decisive action against the offender of illegal fishing refers to Article 69 paragraph (1) and paragraph (4) on Fisheries Act. The provisions of Article 69 paragraph (1) and paragraph (4) on Fisheries Act which are clearly stated that every law enforcement in the fishery in this case is the

⁴ World Report, 2015, Implementasi Visi Kemaritiman Indonesia, taken from <http://kkp.go.id/index.php/2015/03/18/implementasi-visi-kemaritiman-indonesia/>, accessed on October 1st, 2015 at 10:32 p.m

⁵ Sulasi Rohingati, Info Singkat, Diplomasi Indonesia Terhadap Kasus Penenggelaman Kapal Nelayan Asing, ISSN 2088-2351, *Pusat Pengkajian, Pengolahan Data dan Informasi (P3DI) Sekretariat Jenderal DPR RI*, Vol. VI, No.24/II/P3DI/Desember/2014

⁶ Zaqu Rahman, Penenggelaman Kapal Sebagai Usaha Memberantas Praktik Illegal Fishing, *RechtsVinding*, Media Pembinaan Hukum Nasional, Jakarta, 2015, ISSN 2089-9009

fisheries supervisor, could take special measures in the form of “burning” and/or “sinking” the foreign ship based on preliminary evidence.⁷

On December 5, 2014 the government has sunk three Vietnamese fishing boats which have been proven guilty in stealing the fish. The third ship was arrested by Imam Bonjol KRI-383 on November 2, 2014, in Indonesian waters within ± 25 NM from Tarempa, Anambas at point coordinates approximately 73.1 miles east of Tarempa, which is included in the district Anambas, Riau Islands.⁸ This action would be predicted to be effective and make a deterrent effect, because the boat is the main production tools of theft perpetrators. If the ship with its expensive equipment is drowned, thieves will think a thousand times to repeat thefts in Indonesia since the motive of the theft was to get the profit.

The issue of illegal fishing by foreign vessels is not only the loss of fisheries resources, but also about infringement of state sovereignty which is very principle, therefore the law enforcement and the sovereignty should really be enforced. The decisive action in the form of the sinking of ships in international diplomacy is also considered to be very effective; concrete and decisive action is more important and effective than a thousand threats.⁹ For the Minister of Marine Affairs and fisheries Susi Pudjiastuti and Minister of Foreign Affairs Retno Marsudi, the decisiveness action is the Indonesian

⁷ Law Number 45 of 2009 on Fisheries

⁸ KKP News, 16 Kapal Ilegal Ditangkap Dalam Sebulan, 7 Diantaranya Asal Vietnam, taken from <http://kkp.go.id/index.php/berita/16-kapal-ilegal-ditangkap-dalam-sebulan-7-diantaranya-asal-vietnam/#>, accessed on October 1st, 2015 at 10:13 p.m

⁹ Zaqiu Rahman, *op. Cit.*

Government's effort to show that the sovereignty of this country which cannot be bought.¹⁰

Based on the United Nations Convention on the Law of the Sea (UNCLOS), a state has sovereignty in the area of the territorial water, contiguous zone, continental shelf, Exclusive Economic Zone (EEZ), and inland waters. Indonesia as a country that has ratified the UNCLOS has the authority and the sovereignty to enforce the laws relating to interests of the country in the territorial waters of the borders with other countries. In the law enforcement efforts, Indonesia has to harmonize the national laws with the provisions of international law.

The actions of Indonesian Government to sink foreign fishing boats which steal fish illegally should comply with the provisions of international law. The impact should be considered, because the sinking of foreign fishing vessels may cause political tension that may lead the armed conflict in waters bordering neighboring countries.

The act of shooting of other state-owned vessels also violates the provisions of the United Nation Charter which is binding on Indonesia as a member of the United Nations. As the peace-loving country, Indonesia must resolve any conflicts that arise peacefully. Therefore, the form of shootings and sinking of foreign vessels clearly is not the wisest policy to resolve the conflict

¹⁰ Agustinus Handoko, Soal Peneggelaman Kapal Asing, Kedaulatan Negara Tak Bisa Ditawar, taken from <http://bisniskeuangan.kompas.com/read/2014/11/28/0530007/Soal.Peneggelaman.Kapal.Asing.Kedaulatan.Negara.Tak.Bisa.Ditawar>, accessed on October 9th, 2015 at 9:33 a.m

peacefully and is not the characteristic of the a civilized nation.¹¹

Based on the background above, it is interesting to study more about the implementation of the sinking of illegal fishing boat in Indonesia and analyze the sinking of illegal fishing boat in the perspective of International law. It focuses on Indonesia reasons in implementing the policy of the sinking of illegal fishing boat and the perspective point of International Law toward the punishment of the sinking of illegal fishing boat.

¹¹ Sindo News, Konsekuensi Penenggelaman Kapal, taken from <http://nasional.sindonews.com/read/935809/18/konsekuensi-penenggelaman-kapal-1418270847>, accessed on October 13th, 2015 at 8:45 a.m

B. Research Problem

Based on the background above, it can be formulated the research questions as follows:

1. How does Indonesia regulate the punishment of the sinking of illegal fishing boat?
2. How is the perspective point of International law toward the penalty of the sinking of illegal fishing boat?

C. Objectives of Research

1. To analyze the issue of the sinking of illegal fishing boat conducted by Indonesian Government. It learns more about the reasons of the implementation of punishment of the sinking of illegal fishing boat.
2. To understand or to conduct a library research on the sinking of illegal fishing boat and get the perspective point in the scope of International law.

D. Benefits of Research

There are some benefits of research, namely:

1. Theoretical Benefit

The research regarding on this case will add the reference collection and also know deeply about the implementation of the punishment on the sinking of illegal fishing boat in Indonesia and the perspective point of International Law regarding on the

sinking of illegal fishing boat. The research will also give more understanding on the reasons of Indonesia in implementing the punishment of sinking of illegal fishing boat.

2. Practical Benefit

The research will give the benefit on more understanding about the sinking of illegal fishing boat which concern about the implementation of sinking of illegal fishing boat in Indonesia and to know in detail about the view of International law in the case of the sinking of illegal fishing boat. In addition, the research will provide understanding more on what is the impact of the sinking of illegal fishing boat which is done by Indonesian Government.

E. Outline

The research consists of five chapters, namely Chapter I: Introduction. Chapter II: Literature Review. Chapter III: Research Methods. Chapter IV: Result and Discussion, and lastly, Chapter V: Conclusions and Suggestions.

The aims of the research are to describe why Indonesia implements such punishment and to learn more about the perspective of international law towards the punishment on the sinking of illegal fishing boat. Besides, this research will elaborate the topic systematically by dividing it into five chapters.

The first is Chapter I consisting of Introduction. It elaborates general matter, such as background, research question, research objective, research benefits, and overview of the chapter. The background contains the explanation

of the Indonesian Government policy regarding the implementation of the punishment on the sinking of illegal fishing boat. The focus of the problem is on the perspective of international law on the sinking of illegal fishing boat.

The second is Chapter II, Literature Review which elaborates each variable on this undergraduate thesis; the definition of illegal, unregulated, and unreported fishing, and the explanation of Treaty of Amity and Cooperation. Moreover, it discusses more about the International Law of the Sea and Indonesia Law of the Sea, including the explanation on the regulation in the fisheries field. Then it is connected to the theory of relation between international law and national law, namely monism and dualism theory.

The third is Chapter III, Research Methodology. Here the author explains the research method used in this undergraduate thesis. Type of research used in this thesis is normative legal research. It means that in the analysis the researcher uses the act or regulation as the primary sources. Other resources are taken from secondary and tertiary legal materials. The data were collected from library research such as the act, regulation, books, journals and others relevant documents. Moreover the author analyzes the data through descriptive qualitative method which tries to seek the perception in the form of words and language.

Chapter IV is about the findings and discussions. This chapter elaborates the case with the normative legal research, with statute and comparative approach. This chapter describes more about the implementation of the sinking of foreign fishing boat in Indonesia which is the sovereignty as the main reason

of Indonesia to implement that punishment. Then the discussion is continued to its perspectives in term of International law toward the punishment of the sinking of illegal fishing boat. In the end the researcher reveals its connection with the theory of relation between international law and national, namely monism and dualism theory.

The last is Chapter V which provides some conclusions and suggestions. Conclusions are given as the answer of the research questions, and the suggestions for future implementation.