

MARINE AND FISHERIES LAW POLICY AGAINST *ILLEGAL FISHING*, FISHING BY PROHIBITED MEANS AND IN PROHIBITED AREAS

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Abstract

This study aims to analyze the maritime and fisheries law policies against illegal fishing, illegal fishing and in forbidden areas. The research method used is a qualitative method. The results showed that the concept that needs to be included in the fisheries law regarding illegal fishing, one of which is because illegal fishing is not only fishing without a license but also fishing in a forbidden way or even in prohibited areas. The number of violations of foreign fishing vessels such as Thailand, Vietnam, China and others. It proves that the system of monitoring and law enforcement in Indonesian waters is still very weak. This is understandable because of the vastness of Indonesia's territorial waters and the high cost required to implement an effective system, among others, what can be done is by negotiating an agreement on fishing access with neighboring countries Malaysia, Thailand and Singapore in this way. in the area of Indonesia's exclusive economic zone (EEZ) can be formulated in a clear legal framework.

Key words: legal policy, maritime, fisheries law, illegal fishing, exclusive economic zone

A. Introduction

Indonesia as the largest archipelagic country in the world with abundant potential and natural wealth. With two-thirds of its territory is sea and it is one of the countries that has the longest coastline in the world. In addition, geographically Indonesia is located between two continents, namely the Asian continent and the Australian continent and two oceans, namely the Indian Ocean and the Pacific Ocean. This region is the most dynamic region in the arena, both economically and politically. With this strategic geographical location, Indonesia has advantages and at the same time high dependence on the marine sector. In addition to comparative advantages based on

geographical location and potential natural resources in marine areas contain biological or non-biological resources that are very beneficial for the survival of the community.

This potential can be obtained from the seabed and land below, in water and sea level, including coastal areas and small islands, it is very logical if the marine economy is used as a fulcrum for national economic development. Therefore, Indonesia's seas must be managed, maintained, utilized, and preserved. In accordance with what is mandated in Article 33 of the Constitution of the Republic of Indonesia Year 1945.¹ The following is the calculation of the territory of the country of Indonesia.² The island area is connected by seas and straits which are the seas of national jurisdiction to form an archipelagic country that is 5,110 km² long and 1,888 km² wide, water area is about 5,877,879 km², territorial sea area is about 297,570 km², waters of Indonesia's exclusive economic zone (EEZ) are 695,422 km², beach length is 79,610 km², of which two-thirds is sea and land area is 2,001,044 km². Thus it can be said that physically, Indonesia is the fifth largest country in the world.

Indonesia as an archipelagic country has very wide waters and in it there are also a variety of resources, namely resources in the form of fish of all kinds and all kinds of other natural wealth, such as coral reefs, seagrass beds, and other marine biota. The existence of fish resources contained in Indonesian waters is very much, in terms of quantity and various types can be managed and utilized for the benefit of the nation and state, especially the community as a whole. In Law No. 31 of 2004 it has been affirmed that waters that are in the sovereign territory and jurisdiction of the Unitary State of the Republic of Indonesia (NKRI) and the Indonesian Exclusive Economic Zone (EEZ) and the high seas based on international provisions, contain fish resources and potential fish farming land, are the blessings of God Almighty entrusted to the Indonesian people who have the philosophy of life Pancasila and the 1945 Constitution, to be utilized as much as possible for the welfare and prosperity of the Indonesian people. In the implementation of national development based on fish resource

¹ Article 33 of the 19945 Constitution

² Suryo Sakti Hadiwijoyo, *Legal Aspects of Indonesian State Territory*, Graha Ilmu: Yogyakarta, 2012, p. 53.

management, it needs to be done as well as possible based on justice and equity in its use by prioritizing the expansion of employment opportunities and improving the standard of living for fishermen, fish farmers, and / or parties related to fisheries activities, as well as fostering the sustainability of fish resources and the environment.

According to Hempel and Pauly, fisheries are activities that exploit biological resources from the sea. The definition of fisheries expressed by Hempel and Pauly limits to marine fisheries, because fisheries are indeed all derived from hunting activities which must be distinguished from *farming activities* such as cultivation.³ According to Lackey, the definition of fisheries is a system consisting of three components, namely aquatic biota, biota habitats and humans as users of these resources. These components will affect the performance of fisheries. According to Lackey, fisheries can be grouped based on several traits, including:

1. Fisheries by environmental type, for example; freshwater fisheries, seas, lakes, rivers and dams.
2. Fisheries based on harvesting methods, for example; *trawl fisheries, dipnets, purse seine* and so on.
3. Fisheries based on the type of access permitted, for example; Open access fisheries, open access fisheries with regulations and fisheries with limited access.
4. Fisheries based on *concern organisms*, for example; fisheries of salmon, shrimp, crab, tuna.
5. Fisheries based on the purpose of catching, for example; commercial fisheries, subsistence, recreational fisheries.
6. Fisheries based on the degree of naturalness of the target animal, total from nature, semi-cultivation or total cultivation.

In Law Number 31 of 2004 concerning fisheries as amended by Law Number 45 of 2009 concerning fisheries⁴ reads as follows:

"Article 1 In this law, what is meant by fisheries is all activities related to the management and utilization of fish resources and their environment starting from preproduction, production, processing to marketing carried out in a fishery business system".

³ The discussion about the definition of fisheries according to experts is contained in Akhmad Fauzi, *Fisheries Economics*. Publisher PT Gramedia Pustaka Utama: Jakarta, 2010, p. 20.

⁴ Article 1 of Law Number. 45 Year 2009 About Fisheries

One of the biggest losses of the country is the problem of *illegal fishing* practices. state losses are due to the continuous theft of fish in Indonesian marine waters which have abundant marine resources and are beneficial to all Indonesian people. The practice of fish theft referred to as *illegal fishing* is illegal fishing activities.⁵

There are many kinds of *illegal fishing practices*, such as manipulation of administrative requirements, the use of fishing gear that is not permitted, nets that are not in accordance with laws and regulations, and others.⁶ *Illegal fishing* is known as *Illegal Unreported* and *Unregulated Fishing* (IUU). Quoted from the Directorate General of Capture Fisheries (Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia) IUU *fishing* is fishing activities that are *illegal, unreported, and unregulated*

Fishery activities that are considered *illegal fishing* are referred to as follows:

- a. Fishery activities by foreign persons or vessels in waters under the jurisdiction of a State, without permission from that State, or contrary to laws and regulations;
- b. Fisheries activities carried out by vessels flying the flag of a State that is a member of a regional fisheries management organization, but carried out in a manner contrary to the resource management and conservation arrangements adopted by that organization, where such provisions are binding on the member State, or contrary to other relevant international law;
- c. fisheries activities contrary to national law or international obligations, including the obligations of member states of regional fisheries management organizations to such organizations;
- d. The most common unlawful fishing activity in WPP-NRI is the theft of fish by foreign-flagged fishing vessels, particularly from some neighboring countries.

The types of violations committed by Indonesian-flagged fishing vessels include:

1. Fishing vessels in operation are not equipped with a Fishing License (SIPI);
2. Fish transport vessels in their operation are not equipped with a Fish Transport Vessel License (SIKPI);
3. The fishing grounds and areas are not in accordance with those stated in the permit;

⁵ Akhmad Solihin, *The Politics of Marine and Fisheries Law*, First Printing, Nuansa Aulia: Bandung, 2010, p. 137.

⁶ Marhaeni Ria Siombo, *National and International Fisheries Law*, PT Gramedia Pustaka Utama: Jakarta, 2010, p. 6.

4. Use of hazardous fishing materials or equipment or prohibited fishing gear;
5. Forgery of fishing licenses;
6. manipulation of ship documents, including the size, location of manufacture, and ship ownership documents;
7. The vessel name, vessel size and/or brand, serial number, and engine power do not match those stated in the permit;
8. The type, size and number of fishing gear and/or fishing aids are not in accordance with those stated in the permit;
9. The ship operates without a Sailing Approval Letter (SPB);
10. Not installing or not activating designated fishing vessel and fish carrier monitoring devices (including VMS transmitters);
11. Fishing vessels and fish carriers carry out loading and unloading in the middle of the sea without permission;
12. Fishing vessels transport catches directly abroad without reporting at designated ports;
13. Indonesian-flagged fishing vessels and fish carriers catch/transport fish in the jurisdiction of other countries without permission from the country concerned and without approval from the Government of the Republic of Indonesia.

Based on the *International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU Fishing)*⁷ in 2001, fishery activities that are considered Unreported Fishing are:

1. fishery activities that are not reported or reported incorrectly, to the competent national authorities, contrary to laws and regulations;
2. fisheries activities conducted in RFMO competence areas that have not been reported or reported incorrectly, contrary to the reporting procedures of that organization

The types of fisheries activities that are not reported include:

- a. Reporting of inappropriate catch data
- b. Transfer of catches in the middle of the sea or sea transshipment without being recorded / reported to the competent authorities;
- c. the perpetrators do not report their catch, in order to avoid paying levies on the work done;
- d. fishing vessels and fishing vessels do not report at the port of the ship base according to the permission granted;
- e. Fishing boats directly from the sea carry caught fish abroad.

⁷ *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)*, Food and Agriculture Organization of the United Nations, Rome, 2001, p. 2.

Fisheries activities are not regulated *Unregulated Fishing* based on the *International Plan of Action to Prevent, Deter and Eliminate IUU Fishing (IPOA-IUU Fishing)*⁸ in 2001, what is meant by fishery activities that are considered to be Unregulated Fishing are:

1. Fisheries activities carried out in relevant RFMO areas of competence carried out by vessels without nationality, or by vessels flying the flag of a country that is not a member of such organization, or by fishing companies, conducted in a manner contrary to the conservation and management arrangements of that organization;
2. Fisheries activities carried out in territorial waters or for fish stocks where no conservation and management arrangements can be applied, carried out in a manner contrary to the State's responsibility to conserve and manage marine living natural resources in accordance with the provisions of international law.

IUU *fishing activities* include violations related to the management and preservation of fishery resources in national and international waters. Fish-producing countries enter into bilateral and multilateral cooperation agreements so that they are bound by the rules of fisheries organizations that are followed.⁹ If there is a violation of the rules set by the fisheries organization, the state must automatically comply with the articles of violation that have been regulated, especially with regard to administrative sanctions. If violations related to *illegal fishing* are committed in the sovereign territory of the Indonesian government, whether any territorial area in the EEZ area, then national law shall apply while referring to international law (1982 Convention on the Law of the Sea) which Indonesia has ratified.

⁸ Ibid., p. 3.

⁹ Marhaeni Ria Siombo, *Op.cit.*, p. 112.

B. Discussion

1. Marine and Fisheries Law Regulation Against *Illegal Fishing*

In general, it can be said that the rules regarding fisheries must solve five main problems as contained in Albert W. Koers's book quoted by Frans E. Likadja and Daniel F. Bessie as follows:¹⁰

1. How can it be convinced that marine biological resources are indeed fully utilized.
2. How to prevent overexploitation of these biological resources.
3. How to allocate the capture and sustainability of the marine environment among the nations of the world.
4. How can it be convinced that marine fisheries can be obtained in a more economical and efficient way.
5. How to prepare an adequate knowledge so that the decisions to be made regarding that matter, are based on that knowledge.

The rise of illegal fish theft by itself makes the crew of surveillance vessels, the Directorate General of Marine and Fisheries Resources Supervision and Control (PSDKP) have to fight hard, this heavy task certainly carries logical consequences, in the form of dedication and responsibility. Efforts made by the marine and fisheries department as an effort to prevent IUU *Fishing* largely include:

1. System improvement and licensing regulations;
2. Optimization of supervision through the development of supervisory facilities and infrastructure, improvement of supervisory operations, development of supervisory human resources and SISWASMAS, development of supervisory institutions in the regions,
3. Structuring laws and regulations and law enforcement;
4. Increased cooperation at the national level (between relevant agencies and between law enforcement).
5. Development and enhancement of international cooperation.

¹⁰ Frans E. Likadja and Daniel F. Bessie, *Law of the Sea and Fisheries Law*, Ghalia Indonesia: Jakarta, 1988, p. 33.

Efforts to improve the system and regulate permits are carried out through:¹¹

1. Re-registration of fisheries licensing and research on ownership status and vessel flag.
2. Improvement of facilities, work procedures, mechanisms and procedures for licensing services.
3. Improvement of laws and regulations related to fisheries control and licensing.

Fisheries is an activity related to the management and utilization of fish resources, and as an economic activity, the fishery business will place motivation as a commander in its implementation.¹² Fisheries management areas in Indonesia that are prone to IUU *fishing* in Indonesia's exclusive economic zone (EEZ) are:¹³

1. South China Sea;
2. Sulawesi Sea and Pacific Ocean;
3. Arafura Sea.

While state losses due to *illegal fishing* can be described as follows:

1. It is estimated that per year the country experiences a loss of 30 T.
2. The occurrence of *overfishing* and *overcapacity*.
3. Damage to the sustainability of fish resources as a result of declining fish stocks.
4. The unit catch (CPUE) of fishermen and national companies decreased.
5. Fisheries business is not conducive.
6. Weak competitiveness of Indonesian companies.
7. Indonesian fishermen do not become hosts in their own country (marginalized).

¹¹ Barracuda Magazine, *Pontianak Fisheries Court Decision Controversy*, Vol V, No.2, December 2008.

¹² Djoko Tribawono, *Indonesian Fisheries Law*, first printing, PT. Citra Aditya Bakti: Bandung, 2002, p. 22.

¹³ Department of Marine Affairs and Fisheries, *Nasakah Academic Revision of Law Number 31 of 2004 concerning Fisheries, Op.Cit.*, p. 31.

For this reason, in order to reduce state losses due to *illegal fishing* and provide a deterrent effect on perpetrators of fisheries crimes. There needs to be a comprehensive arrangement so that the law enforcement process, starting from investigation to execution in court to execution of loot from fisheries crimes, can run quickly and fulfill a sense of justice for the community.

In the provisions of criminal policy Law Number 31 of 2004 as amended by Law Number 45 of 2009 concerning Fisheries in tackling *illegal fishing* crimes in Indonesia's exclusive economic zone. The preparation of legislation has a very important position and function in the life of the nation and state, because the product of the preparation will give birth to laws and regulations, both lower and higher. Legislation serves not only as an initiative for drafting laws, but also for granting approval. Philosophically, the function of legislation is to give importance to parliament providing legal guarantees for the citizens of the community it represents.¹⁴ Jimly Asshiddiqie presents four legislative functions, which include:¹⁵ *First, legislative initiation; Second, discussion of the draft law (law making process); Third, binding decision making on international law agreement and treaties or other legal binding documents.* Saldi Isra stated two functions of legislation, which include:¹⁶ First, the authority to form laws; and Second, the process of forming laws (*law making processes*) which is a series of activities consisting of:

1. Submission of draft laws;
2. Discussion of draft laws;
3. Approval of draft laws;
4. Ratification of draft laws; and
5. Promulgation of the state gazette.

Article 5 of Law of the Republic of Indonesia Number 12 of 2011 concerning the establishment of laws and regulations states. In forming laws and regulations, it must be carried out based on the principles of forming good laws and regulations, which include;

¹⁴ Salim HS and Erlies Septiana Nurbaini, Application of Legal Theory to Thesis and Dissertation Research, PT. Rajagrafindo Persada: Jakarta, 2013, p. 52.

¹⁵ Ibid.

¹⁶ Ibid., p. 53.

- a. clarity of purpose;
- b. appropriate institutional or forming offices;
- c. conformity between types, hierarchies and materials of cargo;
- d. enforceable;
- e. usability and usability;
- f. clarity of formulation; and
- g. Openness.

Article 6 of Law of the Republic of Indonesia Number 12 of 2011 concerning the establishment of laws and regulations states, the content of laws and regulations must reflect the principles of:

- a. Stewardship;
- b. Humanity;
- c. Nationality;
- d. Family;
- e. Intermediary;
- f. Bhineka tunggal ika;
- g. Justice;
- h. Equality of position in law and government;
- i. Order and legal certainty; and/or
- j. Balance, harmony, and harmony.

In addition to reflecting the principles referred to in paragraph (1), certain laws and regulations may contain other principles in accordance with the legal field of the relevant laws and regulations. Article 10 paragraph 1 of Law Number 12 of 2011 states:

- 1) Content materials that must be regulated by law contain:
 - a) further regulation of the provisions of the Constitution of the Republic of Indonesia Year 1945;
 - b) order of an Act to be governed by an Act;
 - c) ratification of certain international treaties;
 - d) follow-up on the Constitutional Court's ruling; and/or
 - e) fulfillment of legal needs in society.

From the description above, in the stage of legislation or the formation of fisheries law, it has a very important position and function in the life of the nation and state. Because policies in the formation of laws will affect the effectiveness or absence of a fisheries law if implemented.

Fisheries laws have been amended three times. Starting from the first fisheries law, is Law Number 9 of 1985 concerning fisheries. Then the second, amended by Law Number 31 of 2004 concerning fisheries. The third fisheries law, Law Number <http://xisdxjsu.asia>

45 of 2009 concerning amendments to Law Number 31 of 2004 concerning fisheries, is in force now.

On June 13, 2002 Commission III of the House of Representatives of the Republic of Indonesia (DPR-RI), submitted a proposal for the initiative of the draft Law on fisheries as an amendment to Law Number 9 of 1985 concerning fisheries. The proposal letter was submitted to the leadership of the DPR-RI. Some of the points that became the basis for submitting the draft law on the DPR-RI initiative proposal regarding changes to Law Number 9 of 1985 concerning fisheries are:¹⁷

- a. Some provisions in Law Number 9 of 1985 concerning fisheries, are no longer in accordance with the current situation, especially in terms of limited regulation of aquaculture fisheries, no regulation of fishing on the high seas, no regulation of law enforcement in the field of fisheries, and low / light criminal sanctions;
- b. The law on fisheries should accommodate the development of modern fisheries management, as well as the principles of responsible fisheries management (*Code of Conduct for Responsible Fisheries*), the development of international law of the sea, zoning systems, fish resource monitoring and control systems, and others;
- c. It is necessary to provide an adequate regulatory basis for strengthening and empowering institutions and human resources related to fisheries management, such as supervisory institutions (structural and community), customary/traditional institutions, and others.

One of the backgrounds in the proposer's explanation of the draft Law on fisheries which will replace Law Number 9 of 1985 concerning fisheries proposed by the DPR-RI, is to view the Unitary State of the Republic of Indonesia as an independent and sovereign state based on Pancasila and the 1945 Constitution, has a vast water and land area, and 2/3 of its territory is in the form of sea with a coastline of 81,000 km² consisting of about 17,508 islands.¹⁸

Such regional conditions, clearly contain enormous natural resources, both resources that cannot be recovered and that can recover and have extraordinary economic potential, able to produce products and services with high

¹⁷ House of Representatives of the Republic of Indonesia, Letter Subject: Submission of Proposed Initiative Bill on Fisheries, Jakarta.

¹⁸ Commission III of the House of Representatives, Explanation of the Proposer of the Draft Law on Fisheries, Fisheries Bill in Lieu of Law Number 9 of 1985 on Fisheries, Jakarta, 2002, p. 65.

competitiveness as long as they can manage them appropriately. Meanwhile, the availability of natural resources on land is increasingly limited, especially those that are land-based and in line with the increase in products and the development of economic activities.

The objectives of the fisheries law in question are to:

1. Achieve optimal and sustainable utilization of fish resources and cultivated land;
2. Ensure the sustainability of fish resources and fish farming land and its ecosystems;
3. Apply a precautionary approach with regard to the management and development of fish resources and fish farming land;
4. Utilizing fish resources and fish farming land to encourage economic growth, create jobs and balance the environment in line with national development goals;
5. Encourage community participation in decision-making processes in the field of capture and aquaculture;
6. Increasing the income of fishermen's living standards and fish farming encourages the expansion and equitable distribution of business and employment opportunities;
7. Optimizing the added value of fishery products, meeting food needs, increasing fish consumption and domestic processing industries, and increasing fisheries exports;
8. Expanding the variety of fisheries exports.

2. Marine and Fisheries Law Enforcement Against fishing by illicit means and in restricted areas

One of the concepts that needs to be included in the fisheries law regarding *illegal fishing* is because *illegal fishing* is not only fishing without a permit but also fishing by prohibited means or even in prohibited areas. There are many violations of foreign fishing vessels such as Thailand, Vietnam, China and others. Proving that the surveillance and law enforcement system in Indonesian waters is still very weak.

This is understandable because of the vast territorial waters of Indonesia and the large costs needed to carry out an effective system, among others, what can be done is to negotiate agreements on fishing access with neighboring countries Malaysia, Thailand, and Singapore in this way so that fishing in Indonesia's exclusive economic zone (EEZ) area can be formulated within a clear legal framework.

The policy of criminal sanctions in Indonesia's exclusive economic zone in the fisheries law was originally formed on a draft law proposed by the Indonesian government to the DPR-RI, on September 7, 1983. The government's statement before the plenary session of the DPR-RI regarding the draft law on Indonesia's exclusive economic zone stated that the government's consideration for issuing a government announcement was because the exclusive economic zone regime had been recognized and accepted as customary international law. Until now, there have been approximately 90 countries that announced and promulgated their exclusive economic zones. The government said the factors that prompted the government to issue a government announcement about Indonesia's exclusive economic zone were:

1. The rapid increase in Indonesia's population has led to an increasing need for animal protein, most of which is produced from fisheries.
2. World demand for fish is increasing which has led to the development of fishing industries on a large scale by developed countries. (This raises fears of a massive depletion of marine biological resources, especially fish).
3. Several neighboring countries such as Australia, Papua New Guinea, the Philippines, Vietnam and Malaysia have declared their Exclusive Economic Zones, even in their national legislation. With the promulgation of the Exclusive Economic Zone by neighboring countries, the following problems arise:
 - a. Determination of the boundaries of the Exclusive Economic Zone between the Republic of Indonesia and neighboring countries.
 - b. The promulgation and promulgation of Exclusive Economic Zones by neighboring countries has limited the space for fishing activities by

developed countries in the Exclusive Economic Zones of these countries. (This encourages developed countries' fishing vessels to divert their activities to seas that fall under Indonesia's jurisdiction, which harms Indonesia in the fisheries sub-sector.

In accordance with the focus of discussion in this research study is the provision of criminal acts of theft of *illegal fishing* fish that occur in Indonesia's exclusive economic zone. In the first fisheries law, Number 9 of 1985, the threat of sanctions for *illegal fishing crimes* that occur in the territory of the Indonesian exclusive economic zone must be in accordance with the criminal provisions in Law Number 5 of 1983 concerning the exclusive economic zone of Indonesia. This provision is based on the order of Article 30 of Law Number 9 of 1985 concerning fisheries according to Article 30 of Law Number 9 of 1985, namely:

Whoever violates the provisions of this Law in the Exclusive Economic Zone of Indonesia shall be punished in accordance with the criminal provisions in Law Number 5 of 1983 concerning the Exclusive Economic Zone of Indonesia.¹⁹

The provisions for the threat of sanctions in Law Number 5 of 1983 concerning the Exclusive Economic Zone of Indonesia are only in the form of fines. This is in accordance with Articles 16 and 17 of the criminal provisions of Law Number 5 of 1983. Articles 16 and 17 read:²⁰

Article 16

- 1) Whoever commits acts contrary to the provisions of Article 5 paragraph (1), Article 6, and Article 7 shall be punished with a maximum fine of IDR 225,000,000 (two hundred twenty-five million rupiah).
- 2) The judge in his decision may determine the seizure of the results of activities, ships and/or other equipment used to commit the crime in paragraph (1).
- 3) Whoever intentionally commits actions that cause environmental damage and/or environmental pollution in the Indonesian Exclusive Economic Zone shall be threatened with criminal charges in accordance with applicable laws and regulations in the field of environment.

Article 17

¹⁹ Article 30 of Law Number 9 of 1985.

²⁰ Articles 16 and 17, Law Number 5 of 1983 concerning Indonesia's Exclusive Economic Zone.

Whoever damages or destroys evidence used to commit a criminal act as referred to in Article 16 paragraph (1), with the intention of avoiding acts of confiscation of these items at the time of inspection, shall be punished with a maximum fine of IDR 75,000,000 (seventy-five million rupiah).

At the discussion stage of the draft law on Indonesia's exclusive economic zone, the Government explained that the criminal threat imposed under this law was only a criminal fine and confiscation of ships and other equipment and the results of their activities. This is in accordance with the provisions of article 73 of the Law of the Sea Convention which does not allow the imposition of corporal crime for violations of fisheries regulations in Indonesia's exclusive economic zone (EEZ).²¹

Changes in criminal law policy in tackling *illegal fishing* crimes by the development of fisheries crimes that are tailored to the needs of the community. To improve its welfare, it needs to be supported by several laws regarding the eradication of *illegal fishing*. Based on this situation, it is appropriate if there is an improvement in the formulation policy of the criminal and penal system.

As described above, that in the exclusive economic zone (EEZ) is part of the waters that are under the sovereign rights of the state. In Law No. 5 of 1983 concerning EEZ, acts or actions that fall into the category of crimes have been determined, namely:

1. Conduct exploration and/or exploitation of natural resources or other activities for exploration and/or economic exploitation such as power generation from water, currents and wind in the exclusive economic zone (EEZ), without permission from the government or based on international agreements with the government and carried out in accordance with the terms of international licensing or approval.²²
2. Create and/or use artificial islands or other installations or buildings in the exclusive economic zone (EEZ) without permission from the government.²³
3. Conducting scientific research activities in the exclusive economic zone (EEZ) does not obtain prior approval from and is carried out based on the conditions set by the government.

²¹ Government Statement on the Draft Law on Exclusive Economic Zones (EEZ), Session I of the Third Open Plenary Meeting. p 30

²² Law No. 5 of 1983 Infonesia Exclusive Economic Zone

²³ Op.cit, Art. 6.

4. Carry out actions that cause environmental damage and/or environmental pollution within the exclusive economic zone.²⁴ Such actions are threatened with criminal penalties in accordance with applicable laws and regulations in the field of environment.

Regarding law enforcement in the region (EEZ), Law No. 5 of 1983 Article 13 stipulates, that in order to carry out sovereign rights, other rights, jurisdiction and obligations of the competent government law enforcement apparatus, law enforcement actions may be taken in accordance with Law Number 8 of 1981 concerning the Code of Criminal Procedure, with the following exceptions:

- a. Arrest of vessels and/or persons suspected of violations in the exclusive economic zone (EEZ) includes stopping the ship until the delivery of the ship and/or persons at the port where the case can be processed further;
- b. The delivery of the ship and/or persons must be carried out as soon as possible and must not exceed a period of 7 (seven) days, unless there are force majeure circumstances;
- c. For the purposes of detention, criminal acts regulated in Article 16 and Article 17 are included in the category of criminal acts as referred to in Article 21 paragraph (4) point b of Law Number 8 of 1981 concerning the Code of Law.

Other provisions relating to the exploitation of biological resources in the EEZ are regulated in Law No. 31 of 2004 and Law No. 45 of 2009 concerning Fisheries. According to this Fisheries Law, the fisheries management area of the Republic of Indonesia for fishing and/or fish farming includes:²⁵

- a. Indonesian waters;
- b. Indonesia's exclusive economic zone; and
- c. Rivers, lakes, reservoirs, swamps, and other puddles that can be cultivated, as well as potential fish farming land in the territory of the Republic of Indonesia.

The meaning of Indonesian waters according to Law No. 6 of 1996 includes the Indonesian territorial sea, archipelagic waters, and Indonesian inland waters. Please note that this fisheries law applies to everyone, both Indonesian citizens and foreign nationals; Indonesian legal entities as well as foreign legal entities,

²⁴ Op.cit, Article 16 paragraph (3).

²⁵ Law No. 31 of 2004. Law No. 43 of 2009, Article 5.

Indonesian-flagged fishing vessels and foreign-flagged fishing vessels, as well as Indonesian-flagged fishing vessels that cooperate with foreign parties conducting fisheries activities in fisheries management areas and outside the fisheries management areas of the Republic of Indonesia.²⁶

C. Conclusion

One of the concepts that needs to be included in the fisheries law regarding *illegal fishing* is because *illegal fishing* is not only fishing without a permit but also fishing by prohibited means or even in prohibited areas. There are many violations of foreign fishing vessels such as Thailand, Vietnam, China and others. Proving that the surveillance and law enforcement system in Indonesian waters is still very weak. This is understandable because of the vast territorial waters of Indonesia and the large costs needed to carry out an effective system, among other things that can be done is to negotiate agreements on fishing access with neighboring countries. There needs to be a comprehensive arrangement so that the law enforcement process, starting from investigation to execution in court to execution of loot from fisheries crimes, can run quickly and fulfill a sense of justice for the community.

²⁶ Ibid., see Article 4.

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