**SINKING OF THE PERPETRATOR'S SHIP**

**ILLEGAL FISHING**

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**Abstract**

After the establishment of Indonesia as the world's maritime axis country by prioritizing the aspect of law enforcement of illegal fishing, the sinking of ships by Indonesia is an effort to eradicate illegal fishing.

The purpose of this study is to analyze law enforcement against illegal fishing. This type of research is normative law, with a philosophical, dogmatic, conceptual approach. The research was carried out at the Ministry of Marine Affairs and Fisheries in Jakarta, North Jakarta Fisheries Court. The data used are in the form of legal materials, documentation, and secondary data taken from library materials, reviewing legal principles, positive legal principles, and inventorying laws and regulations that are relevant to illegal fishing. This study also examines the existence of unclear norms and seeks to find the law in the context of actions that should be taken as a result of actions that are contrary to the provisions of international law contained in the KHLI 1982. The data obtained in this study were analyzed quantitatively.

The results of this study show that fisheries law enforcement is carried out by structuring the licensing and supervision system, fisheries criminal policy, and involving the community as well as optimizing coordination between investigating agencies, prosecutors and the judiciary.

Keywords: *Sinking; illegal fishing vessels*

1. **Introduction**

The proclamation of Indonesia as the world's maritime axis by the government since 2014 in Kota Baru, South Kalimantan, is inseparable from the state security aspect of the maritime sector, can also be a strategic field from an economic perspective, so the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia and other related departments, committed to law enforcement related to marine and fisheries, so marine and fisheries development must be based on three main pillars that are integrated with each other. namely aspects of sovereignty (*soverignity*), sustainability (*sustainability*), and prosperity(prosperity) and other aspects.

Regarding sovereignty (*soverignity*), the Indonesian government is determined to eradicate  *illegal fishing* crimes that are rampant in Indonesian territory. One form of illegal fishing that is very worrying is fishing using explosives that contain chemicals that have an impact on environmental damage and pollution.

Given the importance of environmental preservation and preservation, the international community through the conference on the environment held in Stockholm 1972 initiated by the United Nations, gave birth to an agreement formulated in a text that lays the foundation for global regulation of environmental protection in the relationship between development and nature and humans.[[1]](#footnote-1) Other aspects of the environment, natural and man-made, are essential for the well-being and enjoyment of humanity, so they are seen as part of human rights. However, it cannot be agreed that greater emphasis on conference participants shows uncertainty and arguments about human rights that are acceptable as developments in international environmental law.

The rise of disturbances that are seen as damaging the environment caused by pollution, lately the perspective on the environment has been seen as part of human rights, so that environmental damage and pollution can result in the right to a good and healthy environment in certain communities. Data from the Central Statistics Agency (BPS) shows that the number of Indonesians living on the coast reaches 166 million people or 60 percent of the 278.70 million people in Indonesia.[[2]](#footnote-2)

The right to a good and healthy environment is part of human rights, violations of a good and healthy environment are violations of human rights. Therefore, the right to the environment is a human right that must be upheld and respected by the state, law, government and everyone, including the international community.

Violation of the right to a good and healthy environment is an environmental crime. The right to a good and healthy environment is a fundamental human right. These rights are inherent as strengthening the construction of human life, even impossible actions in the era of globalization gross human rights violations can be submitted to the international court as a form of protection of the right to a good and healthy environment.

The law enforcement carried out is related to the rampant theft of fish in Indonesian waters with strict action against foreign vessels used as a means of carrying out illegal fishing, by carrying out fishing has caused protests from several environmental observer countries which they consider a violation of human rights.

Foreign vessels, which have been proven and guilty in a court of law, have been challenged and corrected by several countries as environmentalists. This is based on an assumption, that the ship's sinking has caused fogification in the form of a large number of oil spills sourced from sunken and damaged ships and disturbed the environment where the ship was sunk.

1. **Method of Approach**

The characteristics of this research are qualitative by utilizing the depth of data using the descriptive method of analysis, namely research with the aim of describing, analyzing, and systematically analyzing a fact about a certain situation, with the intention and purpose of providing a systematic, factual, and accurate description of the object discussed.

1. **Research Results**
2. Legal protection against the impact of environmental pollution

State life is often confronted with a social reality that is diverse and varied, including in the law itself, because it often raises the question, whether our law is discriminatory or neutral, describing the existing social structure in two different ways.

Regulations made by the government show an official legal face, not neutral even when implemented in a non-partisan manner. Regulations produced by policymakers are certainly the result of a power struggle, and the dominant opinion shapes them. The applicable law is sometimes very different from the expectations and colorful packaging, so it can often cause protests and rejections and even new differences in interpretation from the public, so that sometimes the law disappoints the expectations of the public because the way it is enforced has an impact that is detrimental to the interests of many people, both on a national scale and on an international scale.

Illegal fishing, which has recently received widespread attention and attention, is an action that until now has become a challenge for the Indonesian government and also coastal communities who depend on marine products for their livelihoods.

Illegal fishing activities are indeed a problem that requires serious handling because it causes very significant losses to the state. It is said to cause very significant losses because it is not only felt by the state, but also by fishermen who are affected by this illegal fishing activity , even further it can be said to be a threat to state security and sovereignty (*soverignity*). The phenomenon of foreign ship fishing that is proven and guilty of illegal fishing in a legal process in court, as a challenge and correction from several countries as observers of environmental problems.

1. Law Enforcement Perspective from the perspective of Human Rights

The act of sinking the ship carried out by the Ministry of Maritime Affairs and Fisheries for illegal fishing activities in Indonesian waters, caused protests from countries that are members of the Organization of Southeast Asian Nations (ASEAN). This is because almost all foreign vessels that carry out illegal fishing activities in Indonesian waters are ships from ASEAN member countries themselves.

Indonesia's enforcement of maritime sovereignty not only received challenges from abroad, but also received seeds of challenges from within the country. The number of ships sunk is more than 300 ships under command from the Ministry of Maritime Affairs and Fisheries. The arguments that come from those who disagree with the act of sinking ships say that ship sinking actually causes pollution and damage to the ecosystem in the marine environment.

As for the positive aspects of the act of fishing boats with implications for strengthening the fishermen's economy, no less than two years since the policy was enacted, there has been an increase in fishery products from Rp 77 billion to 360 billion. The increase in fishermen's income continues to increase in line with the sustainability of the sinking of illegal fishing boats, reaching 125 trillion in the following year.[[3]](#footnote-3) Of course, for Indonesia, it is a breath of fresh air because exploration and exploitation provide significant added value to state revenues and at the same time the national economy.

A further perspective from the policy of sinking illegal fishing vessels has raised the dignity and dignity of the Indonesian nation as a sovereign and independent country. The dignity of the Indonesian nation is upheld because both nationally and internationally it is a country based on law.

In addition to the juridical argumentative underlying the illegal fishing vessel landing, the policy is in accordance with national law, and has also been in accordance with the basic principles and objectives towards Indonesia as the world's maritime axis.

1. Human Rights Perspective on the Right to Protect from Pollution

Traditionally, international law is interpreted as a law that is only a relationship between countries, and therefore, the state is the only subject of international law. This traditional understanding, after World War II, was expanded to include international organizations as subjects of international law that have certain rights under international law. Human beings as individuals are considered to have no rights according to international law, so human beings are considered more as objects of international law.

This theory of the nature of international law forms the conclusion that the treatment of its citizens is not regulated by international law, so it has no effect on the rights of other states, because international law cannot be applied to the violation of human rights of a country against its citizens, so all these problems are exclusively under the domestic jurisdiction of each country. In other words, human rights issues are the internal affairs of each country so that other countries have no right or even prohibited from intervening in human rights violations.

The human rights perspective on the right to be protected from pollution is the important role of the environment in ensuring that every individual can enjoy protected rights. Therefore, environmental protection is an important part of the contemporary human rights doctrine, which is considered a noble right for various human rights, including the right to health and the right to life itself.

Environmental damage can interfere with and undermine all human rights addressed in the universal declaration of human rights as well as human rights instruments. Therefore, the legal principle of a well-recognized human right is a healthy environment as a prerequisite needed for the promotion and enjoyment of some recognized rights. The environmental dimension of existing human rights can be described as a bad environment that will directly limit the ability of each person or group of people to enjoy certain rights guaranteed to them. Likewise, a bad environment will certainly affect the ability of a person or community group to realize their human rights in general.

Environmental protection can be built as a prerequisite to be able to enjoy human rights as necessary. The logical consequence is that environmental degradation can lead to human rights violations upheld by international law.

Next, it will explain the rights guaranteed under international human rights law and question the important role that the environment plays in ensuring that human rights are fulfilled and protected. Comprehensively consider the practical possibility of using human rights enforcement mechanisms in fighting for or campaigning for environmental justice.

It has become a shared commitment that environmental protection is a very fundamental part of a human rights doctrine that permeates various common lives, both on a local environmental scale and on a global environmental scale. This is related to human rights in the health sector and no less important is the right to life itself.

Damage can affect and weaken all human rights as proclaimed in a declaration known as the human universal declaration of human rights and various other internationally recognized human rights instruments. Therefore, a well-recognized and accepted principle of human rights law is the assumption that a healthy environment is a necessary requirement for the promotion and enjoyment of rights recognized both directly and indirectly. Direct in the sense that a bad environment will directly limit the ability of individuals or groups of people to enjoy certain rights guaranteed by them. The indirect meaning is that a bad environment will affect the ability of a person or society to actualize their human rights in general, even more so than that it can be said to hinder the ability of the government to protect and fulfill the rights of its residents. In this case, environmental protection can be built as a prerequisite for fully enjoying human rights. The consequence of this approach is that the deterioration of environmental quality can affect human rights violations in the context of international law.

The rights guaranteed under international human rights law and the importance of playing the role of the environment are sniffed out in ensuring that human rights in this field are affected and fulfilled and protected, as well as making human rights a promotion of the importance of environmental justice.

Various instruments are produced either through unilateral declarations or a series of informal agreements, including decisions of the human rights commission of the United Nations, decisions of international courts that are guided by experts. Such instruments can produce results more quickly because they are initiated by legal experts and can involve stakeholders who are not qualified to negotiate binding and changeable international law because they are more flexible in responding to the dynamic order.

The impact of the sinking of illegal fishing vessels from an environmental perspective has a weakness for the balance of the marine ecosystem. Using bombs to blow up ships in the sea can certainly destroy coral reef habitats and natural habitats of animals and plantones in the sea. Similarly, shipwrecks that are difficult to decompose will be buried, become garbage in the sea and also iron rust from ship engines will pollute the marine environment.[[4]](#footnote-4)

National data on the sinking of illegal fishing vessels from October 2019 to August 2022 shows that 488 vessels have been sunk,[[5]](#footnote-5) as shown in Table 1 below.

TABLE 1

Number of Illegal Fishing Vessels That Have Been Sunk

From October 2019 to August 2022

|  |  |  |
| --- | --- | --- |
| No. | Country of Origin of the Ship | Sum |
| 1  2  3  4  5  6  7  8  9 | Vietnam  Philippines  Malaysia  Tahiland  Indonesia  Papua New Guinea  People's Republic of China (PRC)  Belize  No Flag | 276  90  50  41  26  2  1  1  1 |
|  | Sum | 488 |

Source : Task Force 115 of the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia

Based on the table data, it can be seen that in 2019-2022 there were 488 vessels proven to be fishing illegally in Indonesian waters and in Indonesia's EEZ for a period of 4 (four) years. Of the 488 ships executed by sunk, they came from sharing countries, namely Vietnam has 276 ships, the Philippines has 90 ships, Malaysia has 50 ships, Tahiland has 41 ships, Indonesia has 26 ships, Papua New Guinea has 2 ships, the People's Republic of China (PRC) has 1 ship, Belize has 1 ship, and Without a Flag there is 1 ship.

The legal breakthrough made by the government through the KKP against the imposition of strict sanctions for sinking foreign fishing vessels that plundered fish in Indonesian sea waters. Compared to before the establishment of fisheries courts in ten regions, the handling of illegal fishing cases is carried out by the district courts, where the district courts that handle illegal fishing do not issue a decision on the sinking of the ship. The types of violations committed are basically the same, including not having: SIB, SIUP, SIPI, SLO, not having SIKPI, and IUP.

The handling of illegal fishing cases is indeed directed at the enforcement of fisheries laws that occur in Indonesia's sea waters, which is carried out by imposing heavy sanctions on illegal fishing perpetrators. This is in line with the opinion of the judge at the North Jakarta Fisheries Court, Ramses Pasaribu,[[6]](#footnote-6) who said that in imposing criminal sanctions of fines that are more dominant than the prison sentences imposed on illegal fishing perpetrators, it is based on the provisions regulated in the Fisheries Law, and even though this does not provide a deterrent effect to illegal fishing perpetrators.

In KHLI 1982, it was emphasized that the provisions for the utilization of natural resources in the sea, their regulation, management, supervision, and law enforcement, are completely left to the policies of each country. All activities for the utilization of marine resources are the responsibility of the state concerned, including the protection and preservation of the environment. This is a manifestation of the application of a country's sovereignty, namely the state's responsibility for events within the country's territory and outside the country's borders, but as long as it is related to the interests of the state, it is subject to state law. Of course, the law enforcement signs must be in line with the 1982 KHLI.

The government's firm action in the form of a policy of sinking foreign fishing vessels and local vessels that carry out illegal fishing since the Joko Widodo administration, may have a deterrent effect for them, and the firm policy is proof of the government's partiality towards Indonesian fishermen, so that they can increase their catch to improve their welfare. However, the strict action of the foreign ships as a form of national law enforcement, must also pay attention to the provisions of international law, because since the strict action of sinking the foreign fishing boats, various protests or objections have emerged from the countries of origin of the foreign ship owners.

It should be noted that the enforcement of fisheries law in the sea must seriously pay attention to the provisions of international law as well, namely every handling of illegal fishing cases involving foreign elements, must be in accordance with the provisions of international law, namely Article 73 paragraph (4) of the 1982 KHLI states, that if a foreign ship is arrested or there is a crew member who is detained on suspicion of violating the law national of a country, then the country that arrests and detains the crew of the ship, is obliged to immediately and officially notify the flag state of the ship or the origin of the ship, through appropriate channels and convey the legal actions and measures taken and the punishment decided by the court.

Illegal fishing perpetrators who act on behalf of companies or individuals can be given criminal sanctions, both imprisonment and compensation payments for a number of fish caught. The punishment regarding the perpetrators of *illegal fishing* must be affirmed and of course must be able to deter the perpetrators for their actions.

The rise of illegal fishing in Indonesia in the last four years (2019-2022) has caused many problems in the marine and fisheries sector, because in addition to violating state sovereignty, it also causes state financial losses, reaching US$ 20 billion or Rp. 240 trillion per year[[7]](#footnote-7).

President Joko Widodo's administration since 2016 has issued a policy of sinking and blasting hundreds of foreign fishing vessels that loot fish in WPP-NRI, which is carried out by the KKP before being tried in the country. The juridical basis used to sink and blast hundreds of foreign fishing vessels is the provision of Article 69 Paragraph (4)  [Law No. 45 of 2009 concerning Amendments to the Fisheries Law No. 31 of 2004,](http://www.hukumonline.com/pusatdata/detail/lt4b22031a01f26/node/uu-no-45-tahun-2009-perubahan-atas-undang-undang-nomor-31-tahun-2004-tentang-perikanan)  which reads, "In carrying out the functions as referred to in paragraph (1) Investigators and/or fisheries supervisors may take special action in the form of burning and/or sinking foreign-flagged fishing vessels based on sufficient preliminary evidence."[[8]](#footnote-8)

As a follow-up to the mandate of the 2004 Fisheries Law, ordering the establishment of fisheries courts, from 2007 to 2014 10 (ten) fisheries courts have been formed spread across various district courts in the country. Data from the General Judicial Agency (Badilum) of the Supreme Court, in the last 4 (four) years, namely 2019-2022, there have been at least 1,866 cases of illegal fishing that have been tried in the district court, this figure includes PT Perikanan which has been tried in the fisheries court.[[9]](#footnote-9) Of the number of cases, there are 800 cases or 43 percent of the total number of cases heard in the 10 fisheries courts that have been established by the Government.

The following is shown in the form of a table of illegal fishing cases handled by Task Force 115 of the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia in 2019 – 2022, as seen in Table 2 next to it.

TABLE 2

Fisheries TP Case Handled by the Task Force

(Task Force) 115 KKP 2019-2022

TOTAL: **119** CASES

61

66

48

23

6

10

10

14

CasTrial Powered Process Defense The law remains the law

Investigation Investigation of Examination Decision Stopped in Multi- Door Advocacy IUUF

Small Fishermen

70

49

**Monitored Cases**

**By SATGAS 115**

**Cases Handled Directly**

**By SATGAS 115**

**Agencies that**

**Handle**

**Agencies that**

**Handle**

58

24

14

10

9

1

3

TNI AL

CTF

Police

Immigration

TNI AL

CTF

Police

Source : Task Force 115 KKP of the Republic of Indonesia, May 6, 2020

Table 2 above shows that during the 2019-2022 period, the KKP and related parties handled 119 cases of illegal fishing. The Fisheries TP case is handled by the Police, KKP, and TNI-AL, and Immigration. Of the 119 cases, there are 6 cases that are still in the investigation stage, 23 cases that are in the investigation stage, 10 cases are examined in court, 66 cases have been decided and have permanent legal force, and 14 *cases* have been stopped due to insufficient evidence.

Of the 119 cases above, there are 61 cases that are violations of the Fisheries Law with the Illegal, Unreported, Unregulated (IUU) Fishing mode, 10 cases are advocacy for the defense of small fishermen, and 48 cases are Multi-door or law enforcement using various laws and regulations. From Table 7 above, it can also be seen that there are 70 cases handled directly by Task Force 115 formed by KKP-RI, and there are 49 cases supervised by Task Force 115.

The agencies that handle 70 cases within the scope of Task Force 115 are: 58 cases handled by the police, 9 cases handled by the KKP, and 3 cases handled by the TNI-AL. Meanwhile, the 49 cases supervised by Task Force 115 consist of 10 cases handled by the police, 24 cases handled by the KKP, 14 cases handled by the TNI-AL, and 1 immigration case.

The handling and supervision of illegal fishing cases based on ship flags was carried out by Task Force (Satgas) 115 of the Ministry of Maritime Affairs and Fisheries of the Republic of Indonesia 2019-2022, as seen in Table 8 next to it.

As for the forms of illegal fishing carried out by the perpetrators from 2016-2019, there were 119 different cases, as seen in Table 10 below.

TABLE 3

Number and Types of Illegal Fishing Cases 2019-2022

**Total: 119 Cases**

71

14

2

2

2

4

12

9

1

1

1

IUUF

Fish Bomb

Administration

Population

Immigration

Theft

Quarantine

Oil & Gas

TPPO

Cruise

Document Forgery

Employment

Source : Ministry of Maritime Affairs and Fisheries Task Force, May 6, 2022

Of the 119 cases handled, consisting of several Fisheries TPs, namely 71 cases are IUUF, 9 cases are shipping, 12 cases of human trafficking, 4 employment cases, 14 cases of document forgery, 2 oil and gas cases, 2 quarantine cases, 1 theft case, 1 immigration case, 2 population administration cases, and 1 bomb case.

Law enforcement actions carried out by related institutions are expected to have a significant effect on traditional fishing rights to obtain fish catches with increased weight, and are also expected to be able to increase the country's economic income through abundant fishery resources and marine products. However, this national legal policy must also pay attention to international law, because the problems faced are related to the countries of origin of foreign ship owners which can also cause controversy from various parties.

1. **Conclusion**

Legal protection for those affected by environmental pollution is by considering that existing laws explain discrimination or reflect the existing social structure in two ways. The regulations themselves, the official face of the law, are not neutral at all even when applied unilaterally.

The laws that apply are often different from the promises made. Reality throws a new battleground. Regulations passed, but the circulation of goods decreased and the black market flourished. Then people want amendments or repeals of regulations. Indeed, sometimes the law disappoints people's expectations because of the way it is enforced. As a consequence of these or other factors, most environmental protection agreements are not implemented through a regime of state responsibility or demand for responsibility but rather through various incentive and exchange mechanisms and state reporting. Rather, human rights guarantees should not only depend on state reporting procedures, but other things that permanently or indirectly allow criticism of non-compliant states. The bodies involved are established by the United Nations General Assembly by producing the resulting declarations to be equivalent to a general declaration on human rights about the environment.

The view of human rights related to the right to be protected from environmental pollution puts hope that it will be protected from pollution. It is important because the environment must provide certainty for every individual to enjoy the rights they want to be protected. Judge Weeramantry[[10]](#footnote-10) , who ruled in the case known as the Gabcikovo-Nagymaros case in 1991, declared that environmental protection is an important part of the doctrine of temporary human rights because it is a sacred right for many, including the right to health and the right to self-living. The universally accepted principle of human rights law, namely a healthy environment, is a necessary prerequisite for the recognition and enjoyment of recognized rights

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