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**IMPLICATION OF FOREIGN-VESSELS SINKING POLICY ON
THE LIFE OF THE NEIGHBOURING COUNTRIES**

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Abstract

This research aims to study the effectiveness of sinking vessels policy as a sanction to illegal fishers in Indonesian Archipelago, as well as observing the implication of the foreign-vessels sinking policy on the environment and the harmony of the neighbourhood countries under International Law. Some argue that this policy is exaggerated and might trigger international dispute among neighbourhood states. Moreover, the foreign vessels bombings and sinking, indeed, inflict new problem for the environment. Shipwreck and residual fuels caused by the explosion will pollute marine area, leading to damage the marine ecosystem. Therefore, it is important to review this policy despite its efficacy in solving the crime of illegal fishing. The results of research are expected to provide solution of execution method towards illegal fishers by considering its effectiveness and broad utility. The analysis concludes that this government policy is a good policy and generates significant implication in sanctioning criminals of illegal fishing. Nonetheless, this policy shall be balanced by preserving the sustainability of environment and preventing the damage of marine ecosystem. In order to maintain good relation among the neighbourhood states, mediation and information shall be managed prior to the execution.

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1. Introduction

Indonesia is an archipelagic country with a strategic cross-position, located between two continents and two oceans. The size of the Indonesian archipelago is 9.8 million km² (all territory of Indonesia), and the sea area is 7.9 million km². Indonesia plays an important role in sea traffic because of its strategic cross-position. Although it gives benefit to the country, the position harms the state in terms of social economy, culture, as well as in defence and security aspects.

The extent of the Indonesian archipelago's sea and the number of criminal acts within Indonesian sea require urgent regulation. One form of Government Law and Regulation Reform is the enactment of the Act Number 31 Year 2004 which is then amended by the Law Number 45 Year 2009 on Fisheries. For Indonesia, the Law Number 45 Year 2009 on the Amendment of the Law Number 31 Year 2004 regarding Fisheries is very important due to the size of our water area, which almost reach 6 million square kilometres (Istanto, 2015). The determination of a country's sovereignty over its territorial water is very important to know the extent of its rights and obligations, as well as the applicable mechanisms to law enforcement. The extent to which Indonesian waters can be claimed, the determination can be based on the delineation of the outermost base of the outer islands as it is regulated in UNCLOS (Buntoro, 2014).

By the Third Conference on the Law of the Sea in 1982, leading to the establishment of UNCLOS and gaining the approval of the United Nations (UN), the conception of Indonesia as an archipelagic state was accepted (Lubis, 2014). Indonesian territorial waters, according to the Law of the Sea 1982 can be distinguished into three. Those are:

1.1. Territorial Sea

The territorial sea border is an imaginary line that is 12 nautical miles from the baseline towards the high seas. If there are two or more countries controlling an ocean, while the width of the ocean is less than 24 nautical miles, the territorial line is tied equidistant from the line of each country.

The sea that lies between the lines with the territorial boundary is called territorial sea. The sea that lies next to the baseline is called the internal sea/deep waters (the archipelagic sea). The bottom line is the imaginary line connecting the points from the outer ends of the outer islands. A country has the full sovereign right to the territorial sea border but has the obligation of providing peaceful and safe passage both above and below sea level.

1.2. Continental shelf

The continental shelf is the seabed that is geologically and morphologically a continuation of a continent. The depth of the sea is less than 150 meters. Indonesia lies on two continental bases, namely the continental shelf of Asia and the continental shelf of Australia. The boundary of the continental shelf is measured from the base line, which is at most 200 nautical miles. If there are two or more countries controlling the oceans on the continental shelf, the borders of the country are drawn equidistant from their respective country bases. Within the borders of the continental shelf, Indonesia has the authority to utilize the natural resources within it, to provide a peaceful and safe cross-sailing passage. The Government of Indonesia issued announcement concerning the boundaries of the continental shelf on 17 February 1969.

1.3.Exclusive Economic Zone (EEZ)

Exclusive Economic Zone is a 200-nautical sea lane over the open sea measured from the baseline. Within this exclusive economic zone, Indonesia has the first opportunity to utilize marine resources. Within this exclusive economic zone, the freedom of voyages and submarine cables and also pipelines remain recognized in accordance with the principles of the International Law of the Sea, the boundaries of the continental shelf. In the case the boundaries of the exclusive economic zones between two neighbourhood's states overlap, a line connecting the same point away from the base line of the two countries is determined as the limit.

In accordance with the international law, the territorial sea of Indonesia as far as 200 nautical miles from the land is the territory, which is absolutely controlled by the State. Thus, the government manages the wealth of the sea, including the fish. The government, in this case the Navy, has the right to arrest illegal vessels that enter and loot Indonesian seafood (Mahmudah, 2015).

The vast territorial waters with the winding terrain are certainly a tremendous constraint for the Navy patrol. The lack of defence equipment and personnel in the security of the sea raises the lack of maximum prevention of Illegal Fishing perpetrators from various countries who take the wealth of the sea in the waters of the archipelago. Indonesia suffers losses up to trillions of rupiah per year because of illegal fishing. During the reign of President Joko Widodo-Jusuf Kalla, a policy was made for the perpetrators of Illegal Fishing to reduce the state's losses caused by illegal fishing. However, the steps taken by the government of Joko Widodo-Jusuf Kalla are considered quite controversial, such as burning, bombing, shooting, and sinking the foreign fishing vessels that violate Indonesian sovereignty. Such action is considered effective to provide "shock therapy" to the offender (Setya, 2017).

Indonesia, having ratified UNCLOS, has the authority and sovereignty to enforce the law related to the domestic interest in the territorial waters of the border with other countries. In the effort of law enforcement, Indonesia must align the provisions of national law with the provisions of the international law. Indonesia has to prepare procedural action in accordance with the process of law in a specified time. Based on the United Nations Convention on the Law of the Sea (UNCLOS), a country has sovereignty within territorial sea, additional zones, continental shelf, exclusive economic zone (ZEE), and inland waters.

The Government of Indonesia through the Ministry of Marine Affairs and Fisheries has made good inroads since under the leadership of Joko Widodo-Jusuf Kalla. However, it is important to note that national and international societies continue to monitor the policy. Therefore, to uphold the sovereignty of the state in its territorial waters, the Republic of Indonesia as a state of law (*rechtsstaat*) must use reasonable and less vigilant methods of law enforcement. Vigilante is the method that trigger international conflict among countries, especially in the principle of neighbouring countries' life.

In addition to international ethical reasons, the bombing and sinking of foreign vessels turned out to cause new problems to the environment. Shipwrecks in the waters damage the coral reefs and marine life because the nature cannot decompose them. The remaining fuel caused by the explosion of the vessel will contaminate the marine waters that impacts on the destruction of marine ecosystems. Therefore, the policy needs to be re-examined, although it is considered efficient to cope with Illegal Fishing crimes.

2. Problem Statement

The execution of the sinking of foreign vessels for Illegal Fishers in the Exclusive Economic Zone (ZEE) of Indonesian waters became a highly controversial policy that attracts international attention. This policy is considered too excessive and tend to provoke international disputes of the neighbouring countries. In addition, the bombing and sinking of foreign vessels turned out to cause new problems to the environment. Although considered to be quite efficient in overcoming Illegal Fishing crime, these actions are assumed to be an arbitrary action of state.

Subjects to International Law, all states must undertake international norms (Starke, 2012). Indonesia may become the medium to resolve the disputes among countries through international organization in which the country actively participate. Illegal Fishing is assumed to trigger the conflicts among countries around Indonesia because they do not settle the dispute through negotiation nor mediation.

The efforts to resolve the dispute among states peacefully and accountably should at least be the most permanent legal option that can minimize the conflict. On the other hand, the efforts are expected to maintain the harmony among the neighbouring countries.

3. Research Questions

Based on the background and the problem statement, the study questions specifically on how the implication of the policy in applying the sanction of foreign-vessels sinking on the life of the neighbouring countries around Indonesia.

4. Purpose of the Study

This paper aims to:

Identify the implications of the policy of imposing the sanction of foreign vessel sinking on the environment and on the harmony of the neighbouring countries governed by International Law.

5. Research Methods

This research uses several methods as follow:

a. Library studies

It is the inventorying and researching legal materials and written data, whether in the form of legislation concerning Illegal Fishing and International Law, books, scientific journals, articles, newspapers, and other written documents relating to the object of research.

b. Field study (Field research)

This is to support data found through library studies. This method covers interviewing the competent sources, such as International Legal Specialist, Official of Ministry of Maritime Affairs and Ministry of Foreign Affair.

6. Findings

Indonesia as a country subject to international law and become part of international organizations, such as The UN and ASEAN, must uphold the principles set out in International Law. One of the principles governing international harmony and peace is the principle of maintaining good-neighbourliness or better known as Doctrine of the Equality of States.

The Doctrine of Equality of States was developed since the beginning of the history of International Law. It turns out that the doctrine has survived until now with additional emphasis by naming it as the principle of sovereign equality of States in the Declaration on Principles of International Law Concerning and Co-Operation among States in accordance with the United Nations Charter released by the UN General Assembly in 1970. With the doctrine, the States enjoy the equal rights and duties of the international community regardless the economic, social, political, and other circumstances. Article 1 of the UN Charter expresses respect for the principle of equal rights. Similarly, its Article 2 states on the principles of equality of sovereignty of its members and other recognized principles of UN members, such as the principle of non-interference in the internal affairs of other States, and etc. Another important provision of the Charter of the United Nations is in Article 74 concerning the general principles of good-neighbourliness in the social, economic, trade and other fields. Similarly, international law recognized the existence of the principle of peaceful co-existence.

In this globalization era, relations among countries become something important, especially between Indonesia and other ASEAN countries. The strict action of a country to foreigners will affect the good relations among them. Looking through the case of foreign-vessels sinking, followed by Indonesian government's bombing the foreign vessel without negotiating the flag state can be inferred to affect the good relations of both states. Nevertheless, from the legal aspects, decisive action of vessel sinking by means of bombing is not contradictory to UNCLOS. Confirmed in Article 73 (3), what is protected is the human, instead of the vessel. The people may be fined or deported without being given confinement. Meanwhile, his ship may be confiscated or even drowned by the Indonesian Government, and, of course, subject to processes in accordance with applicable legal procedures in that country (pssat, 2016).

From the perspective of international relations, Indonesian relations with the relevant states are potential to deteriorate, for the relevant countries want their citizens to be prosecuted according to the laws of their country. The laws are deemed to protect the rights of its citizen, not to mention the conflict of interest among countries.

President Joko Widodo has carried out the real efforts to eradicate Illegal Fishing practices by instructing the apparatus to act decisively. It includes the practice of sinking the foreign-vessels stealing the fish in Indonesian water. This is certainly done in accordance with the applicable laws, such as securing the crew of the ship before sinking it.

Foreign-vessels sinking policy for Illegal Fishing actors has positive impact and negative impact on Indonesia. The positive impact includes ending the activity of stealing the fish in Indonesian waters. Besides, it can also save the marine habitat. Further, the action is the form of enforcement of state sovereignty over the territory of a country. In addition, this policy also provides benefits for local

Indonesian fishermen. Under this policy, foreign fishing vessels that will commit theft in Indonesian seas will think twice about the crime.

This policy also has negative impact. They must impose such sanction and repatriate foreign fishermen to their respective countries. To do this, the government must pay a lot of money. Further, the pollution resulted from blasting and burning foreign vessels can contaminate the air (kskbiogama, 2016)

The sources of marine pollution include oil spills, remnants of war ammunition, and waste from land transportation through rivers, marine transport emissions, and pesticide disposal from agriculture. This pollution resulted in the destruction of marine ecosystems, coral reef damage, marine biota and other deaths.

If we look more closely, the material for building a ship is wood, plastic, and some ferrous metals. Drowning of ships may cause environmental pollution due to scattered parts of boats that have been burned or detonated, especially parts of ships made of plastic. Drowning boats can also reduce the beauty of the beach because of the existence of a pile of skeletons of ships and floating goods due to the burning or bombing of ships. Another effect is that marine ecosystems become disturbed due to many foreign bodies in the waters that disrupt the life of fish so that fish are reluctant to live in the area of shipwrecks disrupt water tourism because wreck destroys the beauty of the sea as it becomes rubbish in the sea.

Based on the above reviews, the impact of ship sinking policy for marine ecosystems is obviously very large. Viewed from another perspective, this policy is very effective to reduce the number of illegal fishing that occurs in Indonesian waters by foreign ships.

According to Professor of International Law University of Indonesia, Hikmahanto Juwana, there are five reasons why the policy is worthy of support and will not worsen the relationship between countries. First, no country in the world justifies the actions of its citizens who commit crimes in other countries. The vessels drowned are those without licence to catch fish in Indonesian territory, thus making the act a crime. Second, the act of sinking is done in the territory of sovereignty and sovereign rights of Indonesia (Exclusive Economic Zone). Third, the act of drowning is done on the basis of legal provisions, namely Article 69 section (4) of the Fisheries Law. Fourth, other countries should understand that Indonesia is harmed by such criminal acts. If it continues, it will increase the loss. Fifth, the drowning process has been conducted by considering the crew's safety. (*Ada 5 Alasan Kenapa Penenggelaman Kapal Asing Tak bisa diprotes*, 2016).

Nevertheless, the government must continue to socialize the illegal fishing vessel sinking policy to other countries. Hikmahanto Juwana emphasized that the government can inform the policy to the ambassadors assigned in Indonesia to forward the information to their respective governments, especially to countries whose fishing vessels often enter illegal Indonesian territory, such as Thailand, the Philippines, Malaysia, China, and also Taiwan representative. The next step, the Government coordinates with representatives of countries whose fishing vessels are drowned in order to maintain good relations between countries.

7. Conclusion

The execution of foreign-vessels sinking affect the environment and marine biota. The impact of the policy for marine ecosystems is obviously very large. However, it is very effective to suppress the number of illegal fishing occurred in Indonesian waters by foreign ships.

There are five reasons to remain in favour of foreign ship sinking policies. First, no country in the world justifies the actions of its citizens who commit crimes in other countries. Indonesia only sinks unlicensed vessels. Second, the act of sinking is done in the territory of sovereignty and sovereign rights of Indonesia (Exclusive Economic Zone). Third, the act of drowning is done on the basis of legal provisions, namely Article 69 paragraph (4) of the Fisheries Act. Fourth, other countries should understand that Indonesia suffers damage by such criminal acts. The continuation of crime will cause the greater losses. Fifth, the drowning process has considered the safety of the crew.

Nevertheless, the government must continue to socialize the illegal fishing vessel sinking policy to other countries. The government shall inform the policy to the ambassadors assigned in Indonesia to forward it to their respective governments to maintain the good relations the countries. In addition, good communication and mediation between countries is deemed necessary prior to the imposing sanctions on foreign nationals who commit violations in the territorial waters of Indonesia, so that good relations between countries are maintained.

References

- Ada 5 Alasan Kenapa Penenggalaman Kapal Asing tidak Bisa diprotes. Retrieved <http://news.detik.com/> December 15, 2015.
- Buntoro, Kresno. (2014). *Lintasnavigasi di nusantara Indonesia*. Jakarta: Rajawali Pres.
<https://kskbiogama.wg.ugm.ac.id/2016/03/31/sahabat-nelayan-kebijakan-tentang-penenggelaman-kapal-asing-ilegal-sebagai-bentuk-sikap-anti-illegal-fishing-di-indonesia/>
<http://pssat.ugm.ac.id/2016/03/24/mempertanyakan-tindakan-penenggelaman-kapal-asing>
- Istanto, Y. (2015). *Penenggelaman kapal pelaku Illegal Fishing sebagai upaya penegakan hukum perikanan di Indonesia (Studi Putusan Nomor 4/PID.SUS.PRK/2014/PNTPG Pengadilan Negeri Tanjungpinang)*. National Seminar Proceeding of Multidisciplinary Sciences and Call for Papers UNISBANK Kajian Multi Disiplin Ilmu untuk Mewujudkan Poros Maritim dalam Pembangunan EKonomi Berbasis Kesejahteraan Rakyat. ISBN: 978-979-3649-81-8
- Starke, J.G. (2012). *Pengantar hukum internasional 1* (10th edition). Jakarta: Sinar Grafika
- Lubis, Hamzah. (2014). *Tinjauan Hukum: penahanan, pidana penjara, dan subsider kurungan di ZEE Indonesia*. Varia Peradilan (Law Magazine Year XXIX No.341 April 2014). ISSN 0215-0247
- Mahmudah, Nunung. (2015). *Illegal Fishing "Pertanggungjawaban pidana korporasi di wilayah perairan Indonesia."* Jakarta: Sinar Grafika
- Setya, F. E (n.d). Memperkuat peraturan menteri kelautan dan perikanan No 4 Year 2015: Sebuah Kritik dan Saran. Retrieved Februari, 2017, from <https://edwison.wordpress.com/tag/kebijakan-perikanan/>