

**ILLEGAL, UNREPORTED AND UNREGULATED FISHING  
AND  
TRANSNATIONAL ORGANIZED FISHERIES CRIMES:  
PERSPECTIVES OF LEGAL AND POLICY MEASURES OF INDONESIA**

**SUBMITTED BY:**

**NAME : ZAKI MUBAROK  
SUPERVISOR : PROFESSOR PATRICK VRANCKEN  
CO-SUPERVISOR : VALENTINA GERMANI, LL.M**

**DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA  
OFFICE OF LEGAL AFFAIRS, THE UNITED NATIONS  
NEW YORK  
2016**

**DISCLAIMER**

**THE VIEWS EXPRESSED HEREIN ARE THOSE OF THE AUTHOR AND DO NOT NECESSARILY REFLECT THE VIEWS OF THE GOVERNMENT OF THE REPUBLIC OF INDONESIA, THE UNITED NATIONS, THE NIPPON FOUNDATION OF JAPAN, OR THE UNIVERSITY OF NELSON MANDELA METROPOLITAN.**

## **ABSTRACT**

It is identified that Illegal, Unreported and Unregulated (IUU) fishing activities lead to severe impacts and continue to be a prominent problem to marine ecosystems. In 2012 report, FAO disclosed that 87.3% of fish stocks were fully exploited or overexploited. In accordance with the recent report, it is estimated that the economic losses from the practice are approximate between \$10 billion and \$23.5 billion per year which is equal to between 11 and 26 million tons of fish catch. The FAO report revealed that fish stocks decreased from 90 percent in 1974 to 71.2 percent in 2013 while 68.8 percent of them were considered overfished.

Indonesia has a significant IUU fishing problem. According to the data provided by Ministry of Marine Affairs and Fisheries of Indonesia (MMAF), each year Indonesia suffers around Rp. 101 trillion (US\$ 8.8 million) annually due to IUU fishing activities. The economic losses Indonesia has suffered from those illicit activities are from the practices of tax evasion, illegal fuel and affected local fishermen income. In response to this matter, Indonesian authorities have committed to eradicating the activities by imposing stringent measures.

When probing IUU fishing, related transnational crimes activities were also discovered such as trafficking in persons, slavery as well as drugs and weapons smuggling. As such, Indonesia has developed several legal and policy measures to overcome IUU fishing and fisheries crimes transnationally organized. Nonetheless, there persist some challenges. This paper examines Indonesia's policy and legal practices in combating IUU fishing and fisheries crimes transnationally organized from the views of domestic and relevant international law and practices.

## ACRONYMS

AIS	Automatic Identification System
ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
BKPM	Investment Coordinating Board
BTC	Bali Tuna Conference
COP	Conference of Parties
CMMs	Conservation and Management Measures
DAFF	Department of Agriculture, Forestry and Fisheries
EEZ	Exclusive Economic Zone
EU	European Union
FAO	Food and Agriculture Organization
FSU	Fisheries Support Unit
FMA's	Fisheries Management Areas
GDP	Gross Domestic Products
GT	Gross Tons
ICTBF	International Coastal Tuna Business
ICJ	the International Court of Justice
IMO	International Maritime Organization
INTERPOL	International Police
IORA	Indian Ocean Rim Association
IPOA-IUU	International Plan of Action on Illegal, Unreported and Unregulated
ITLOS	International Tribunal on the Law of the Sea
IUU	Illegal, Unreported and Unregulated
LOSC	Law of the Sea Convention
MCS	Monitoring, Control and Surveillance
MLRA	Marine Living Resources Act
MMAF	Ministry of Marine Affairs and Fisheries
NMMU	Nelson Mandela Metropolitan University
MoU	Memorandum of Understanding
MPA	Management Protected Areas
MSRA	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006
NCB	National Central Bureau
NPOA	National Plan of Action
NOAA	National Oceanic and Atmospheric Administration
OECD	Organization for Economic Co-operation and Development
PSM	Port State Measure
PPATK	Financial Transaction Report and Analysis Center
RFMOs	Regional Fisheries Management Organizations
SIPI	License for Fishing
SIKPI	License for Fish Transporting Vessel
SIUP	Fisheries Business License
SOP	Standard Operating Procedures
SPB	Sailing Approval Letter
SRFC	Sub-Regional Fisheries Commission

TIP	Trafficking in Persons
TOFC	Transnational Organized Fisheries Crimes
TOC	Transnational Organized Crimes
UNODC	United Nations Office on Drugs and Crime
UNCTOC	United Nations Convention on Transnational Organized Crime
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	the 1995 United Nations Fish Stock Agreement
UNGA	United Nations General Assembly
UNCED	United Nations Conference on Environment and Development
UNODC	United Nations Office on Drugs and Crime
UNDP	United Nations Development Programme
UNICPOLOS	United Nations Open-ended Informal Consultative Process on Oceans and the
U.S	United States
VMS	Vessel Monitoring System
WWF	World Wildlife Fund

## **ACKNOWLEDGEMENTS**

The academic part of my fellowship was undertaken at the Center for Law in Action, Faculty of Law, University of Nelson Mandela Metropolitan, Port Elizabeth, South Africa as part of the whole fellowship program. First of all, I would like to deeply thank to Gabrielle Goettsche-Wanli, the Director of Division for Ocean Affairs and the Law of the Sea, and Valdimir Jares as the Deputy Director.

I would like to extend my sincere gratitude also to Dr. Francois Bailet and Valentina Germani for their valuable assistance, guidance and all the time they dedicated to me and all my colleagues in the batch. Special thanks to the Nippon Foundation of Japan for its kind support to this fellowship program and

I wish to extend my sincere thanks to my supervisor, Prof. Patrick Vrancken, South African Research Chair in the Law of the Sea and Development Africa, for his support and professional guidance during the six months of my academic studies. Many thanks to Prof. Hennie van As, Prof. Stuart Kaye, Prof. Alistair McIlgorm for the valuable assistances as well as the opportunities I can assume. Also thanks to Stephens Tanya, Skei Megan, the officers, staff and students of the Center for Law in Action who have been my good friends.

I also must thank to Ambassador Arif Havas Oegroseno, Deputy Minister of the Coordinating Ministry of Maritime Affairs of Indonesia for his valuable guidance and knowledge. Also thanks to the officers and staff of the United Nations Division for Ocean Affairs and the Law of the Sea, particularly to Simone Dempsey, for all of their support and specially the opportunity for me to learn and understand the important role of the Division in providing advice, studies, assistance and research on the implementation of the Law of the Sea Convention.

Last but not least, to all my good friends in the batch. Keep the spirit up mates !!

# TABLE OF CONTENTS

<b>PART I INTRODUCTION.....</b>	<b>1</b>
1. DOMESTIC AND GLOBAL PROBLEMS OF IUU FISHING AND TRANSNATIONAL ORGANIZED FISHERIES CRIME .....	1
2. THESIS STATEMENT .....	7
3. PURPOSES, SCOPE AND LIMITATION.....	8
4. SIGNIFICANCE OF THE RESEARCH .....	9
5. RESEARCH QUESTIONS .....	9
<b>PART II POLICY PERSPECTIVES.....</b>	<b>11</b>
1. INTERNATIONAL AND DOMESTIC BACKGROUNDS .....	11
1.1 INTERNATIONAL AND COMPARATIVE BACKGROUNDS .....	12
1.1.1 RECENT DEVELOPMENTS AND CHALLENGES .....	12
1.1.2 PRACTICES OF OTHER COUNTRIES AS LESSONS LEARNED .....	18
1.1.2.1 THE UNITED STATES.....	18
1.1.2.2 SOUTH AFRICA.....	21
1.2 DOMESTIC BACKGROUND .....	25
1.2.1 RECENT DEVELOPMENTS: INDONESIA’S MEASURES TO COMBAT IUUF AND TOFC .....	25
1.2.2 CHALLENGES.....	32
2. EXISTING POLICY AND PROPOSED MEASURES.....	35
2.1 POLICY ISSUES.....	36
2.1.1 INTER-AGENCY COLLABORATION .....	36
2.1.2 INTER-COUNTRY COOPERATION .....	39
2.2 PROPOSED MEASURES .....	44
2.2.1 STRONGER BILATERAL AND REGIONAL COOPERATION .....	44
2.2.2 POLICY FRAMEWORK MEASURES.....	47
<b>PART III LEGAL FRAMEWORKS .....</b>	<b>54</b>
1. INTERNATIONAL AND DOMESTIC CONTEXTS .....	54
1.1 INTERNATIONAL OVERVIEW .....	54
1.1.1 LEGALLY BINDING INSTRUMENTS .....	54
1.1.2 CASE LAW .....	63
1.2 DOMESTIC OVERVIEW .....	68
1.2.1 RECENT DEVELOPMENTS: INDONESIA’S MEASURES TO ADDRESS TOFC AND IUU FISHING .....	68
1.2.2 THE ESTABLISHMENT OF FISHERY COURTS .....	71
2. LEGAL ISSUES AND PROPOSED MEASURES .....	75
2.1 LEGAL ISSUES.....	75
2.1.1 LEGAL FRAMEWORKS .....	75
2.1.2 CHALLENGES.....	81
2.2 PROPOSED MEASURES .....	85
2.2.1 DOMESTIC STRIDES.....	85
2.2.2 ENACTING A LAW LIKE OR INCORPORATING THE ELEMENTS OF THE LACEY ACT .....	86
<b>PART IV CONCLUSION .....</b>	<b>93</b>
<b>BIBLIOGRAPHY.....</b>	<b>101</b>

## LIST OF FIGURES

<b>FIGURE 1:</b> INDONESIA FISHERIES MANAGEMENT AREAS .....	25
<b>FIGURE 2:</b> CHALLENGES IN LAW ENFORCEMENT OF INDONESIA IN COMBATTING IUU FISHING	34
<b>FIGURE 3:</b> THE HIERARCHY OF INDONESIA'S LAWS AND REGULATIONS.....	68



## LIST OF TABLE

<b>TABLE I:</b> INTERNATIONAL CONVENTIONS AND AGREEMENTS RELATED TO LIVING MARINE RESOURCES RATIFIED BY INDONESIA .....	61
<b>TABLE II:</b> LIST OF LAWS AFFECTING MARINE RESOURCES MANAGEMENT WITH UPDATED INFORMATION.....	78

**ILLEGAL, UNREPORTED AND UNREGULATED FISHING AND TRANSNATIONAL ORGANIZED FISHERIES  
CRIME:  
PERSPECTIVES OF LEGAL AND POLICY MEASURES OF INDONESIA**

**PART I INTRODUCTION**

**1. Domestic and Global Problems of IUU Fishing and Transnational Organized Fisheries  
Crime.**

It is conceived that fisheries are an important sector for human life as it is a part of diet of millions of people and contributes significantly as income source.<sup>1</sup> From the historical perspective, after the Second World War there was an awareness that ocean resources, although in many cases renewable, are not unlimited and, for that reason, they have to be managed in a proper manner if their roles are to be sustained in providing contribution to food, employment, and social aspects in global growing human population.<sup>2</sup> With regard to the level of marine fish stocks, there was a comparison conducted by the Food and Agriculture Organization (FAO) on the fish stocks. The report revealed that the sustainable levels of fish stock decreased from 90 percent in 1974 to 71.2 percent in 2011 while 28.8 percent of them were considered overfished.<sup>3</sup> This means that fish stocks in general have decreased during that period of time. If this problem is not settled seriously there could be no more fish in the ocean and human life is in danger.

The decline and status of fish stocks have been major concern of countries particularly in terms of food security and sustainable development.<sup>4</sup> In accordance with FAO report in 2012, the proportion of fish stock overexploitation has surged, particularly in the late 1970s and 1980s, accounted for 10 percent in 1974 to 26 percent in 1989. After 1990, the number of overexploited fish stocks have been continuing to increase at a slower pace.<sup>5</sup> The major issue affecting the declining level of fish stock identified is the practices of Illegal,

---

<sup>1</sup> Food and Agriculture Organization (FAO), *the State of World Fisheries and Aquaculture 2010*, (Rome, 2010), p. 6.

<sup>2</sup> The discussion of historical perspective can be found in the preface of the 1995 Code of Conduct for Responsible Fisheries (CCRF) as background to depict on how important to adopt CCRF. 9 November 2016. Available from <http://www.fao.org/docrep/005/v9878e/v9878e00.htm>.

<sup>3</sup> Food and Agriculture Organization (FAO), *the State of World Fisheries and Aquaculture 2014*, (Rome, 2014), p. 7.

<sup>4</sup> Palma, Martin Tsamenyi and Bill Edeson, *Promoting Sustainable Fisheries: the International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing*, (London and Boston: Martinus Nijhoff Publishers, 2010), p. 2.

<sup>5</sup> FAO, *the State of World Fisheries and Aquaculture 2012*, (Rome, 2012), p. 11.

Unreported and Unregulated (IUU) fishing. This activity leads to severe impacts and continues to be a prominent problem to marine ecosystems.<sup>6</sup> From economic perspective, it is estimated that the losses from the practice are approximate between \$10 billion and \$23.5 billion per year which is equal to between 11 and 26 million tons of fish catch<sup>7</sup>.

The developing countries are the most affected by IUU fishing practices. This particularly occurs to several poor countries where the income of the people is highly dependent on fisheries for food and exports.<sup>8</sup> Developing states in Africa and Asia Pacific can be used as instances on the impact of IUU fishing. One recent example of economic losses in the waters of Sub-Sahara Africa is accounted for almost US\$1b in one year which is equal to almost 25% of total amount of fisheries exports annually.<sup>9</sup> Meanwhile, the cost estimated from IUU fishing practices is approximately USD 4.5 billion to USD 5.8 billion a year occurred in Asia Pacific.<sup>10</sup>

As a form of illegal activity, IUU fishing is intertwined to other crimes. In many cases, transnational organized crimes such as people smuggling, trafficking in persons, forced labour and drugs trafficking can be found along with IUU fishing activity. The very example of this case is abalone fishery in South Africa. The United Nations Office for Drugs and Crimes (UNODC) reported that this case had connection with international criminal organization. Abalones from South Africa were exported to other countries but in return drugs were imported to South Africa. Apparently, abalone plundering is part of criminal chain related to theft, prostitutions and drugs in South Africa.<sup>11</sup>

---

<sup>6</sup> FAO, *the State of World Fisheries and Aquaculture 2014*, (see chap. I, footnote 3), p. 9.

<sup>7</sup> United Nations, Resumed Review Conference on the Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, (New York: United Nations Department of Public Information, May 2010), p. 3.

<sup>8</sup> Trade and Agriculture Directorate, Fisheries Committee, “The Challenge of Combatting Illegal, Unreported and Unregulated (IUU) Fishing: Fishing for Development” Background Paper For Session 4 (Organization for Economic Cooperation and Development, March 2014). p. 9.

<sup>9</sup> D. J. Agnew, S.F. Walmsley, F. Leotte, C. Barnes, C. White, S. Good, *Estimation of the Cost of Illegal Fishing in West Africa*, (the Marine Resource Assessment Group, 2010), p. 8.

<sup>10</sup> Robin Lungren, Derek Staples, Simon Funge-Smith and Jesper Clausen, *Status and Potential Fisheries and Aquaculture in Asia and the Pacific 2006*, (FAO Regional Office for Asia and the Pacific, RAP Publication 2006/22) p. 46.

<sup>11</sup> United Nations Office on Drugs and Crime (UNODC), *Transnational Organized Crime in the Fishing Industry (Focus on: Trafficking in Persons, Smuggling of Migrants and Illicit Drugs Trafficking)* (Vienna, 2011) p. 99.

It is also conceived that organized criminal groups such as Russian criminal syndicates, Chinese Triads and other Asia gangs are common to engage in IUU fishing. Russian syndicates exported illegally around two million metric tons of seafood to Europe and some countries such as the United States and Japan earning up to \$4 billion annually in 1990s. The criminal groups are also associated with illegal harvesting of abalone generating up to \$80 million a year.<sup>12</sup>

Indonesia has the same problem as the other countries pertaining to IUU fishing. According to the data provided by MMAF, each year Indonesia suffers losses amounting to around Rp. 101 trillion (US\$ 8.8 million) annually due to this activity including from tax revenue, fuel subsidy and local fishermen income.<sup>13</sup> In order to avoid tax payment, the illegal fishermen use counterfeit license. Those illegal fishermen also use fuel allocated for fisherman and subsidized by Indonesia Government making the loss of state revenue and employ destructive fishing gears leading to the decline of local fishermen fish catch when fishing. For Indonesia's case, most of IUU fishing activities in Indonesia are conducted by fishermen from Vietnam, Malaysia, Thailand, the Philippines, Taiwan, Hong Kong, and China.<sup>14</sup>

In response to this matter, Indonesia authorities have committed to eradicate IUU fishing by imposing tough measures, *inter alia*, by sinking illegal fishing vessels and forming special teams. The Indonesian maritime police has seized 16 (sixteen) ships committing to illegal fishing in Indonesian waters, eight of them were Vietnam-flagged vessels from January to April 2014 and the Directorate General of Marine and Fisheries Resources Surveillance of Indonesia's of the MMAF has confiscated 130 Thailand fishing vessels between 2007 and April 2014.<sup>15</sup> Furthermore, the MMAF has established a Task Force to Prevent and Eliminate IUU Fishing through the stipulation of Ministerial Decree Number 26A/KEPMEN-KP/2015.<sup>16</sup>

---

<sup>12</sup> Don Liddick, "Illegal Fishing and Organized Crime: A Threat to Maritime Security?", 9 December 2014. Available from <http://piracy-studies.org/illegal-fishing-and-organized-crime-a-new-maritime-security-threat/>.

<sup>13</sup> "New Indonesian Maritime Affairs Minister Declares War against Illegal Fishing", *Antara News* (Jakarta), 31 October 2014. Available from <https://www.antaranews.com/en/news/96351/new-indonesian-maritime-affairs-minister-declares-war-against-illegal-fishing>.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> After the enactment of this ministerial decree, a better coordination within the MMAF in addressing IUU fishing problem is established. This document is not made available online as it is considered as internal classified document.

This ministerial decree is aimed to address the problem through a more coordinated effort within the ambit of MMAF.

The government also initiated to form a particular task force in national level through cross sectoral approach by involving other agencies such as Navy, National Police, Maritime Security Agency (Badan Keamanan Laut), Attorney General Office and other relevant institutions through enactment of Presidential Regulation Number 155/2015 concerning the Task Force to Combat Illegal Fishing.<sup>17</sup> This team is known as Satgas 115 (Task Force 115) under the coordination of the Minister of Marine Affairs and Fisheries. The main duties of this task force are not only combatting illegal fishing but also developing fisheries governance through a strategic road map.<sup>18</sup> The reason for taking this approach is the importance of the engagement of relevant institutions to make the efforts more integrated and coordinated in combatting IUU fishing and fisheries crime.

The efforts exercised by MMAF to foster fisheries resources find its momentum as President of Indonesia, Joko Widodo has determined to pay a lot of attentions on maritime issues by declaring Indonesia as Maritime Global Fulcrum.<sup>19</sup> The measures also have garnered supports from Indonesia people. One recent policy measure by Indonesia Government to secure Indonesia's marine resources from IUU fishing is ratifying the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ('the PSM Agreement').<sup>20</sup> This ratification is imperative in having effective implementation as Indonesia is archipelagic country which is rich in biodiversity. Indonesia has also interest

---

<sup>17</sup> Indonesia, Presidential Regulation Number 155/2015 concerning the Task Force to Combat Illegal Fishing, (2015). Available from <http://www.hukumonline.com/pusatdata/detail/lt564da478dd9c0/nprt/lt5110b2266e699/perpres-no-115-tahun-2015-satuan-tugas-pemberantasan-penangkapan-ikan-secara-ilegal-illegal-fishing>.

<sup>18</sup> "Protecting our Waters from Fisheries Crime", *The Jakarta Post* (Jakarta), 14 June 2014. Available from <http://www.thejakartapost.com/academia/2016/06/14/protecting-our-waters-from-fisheries-crimes.html>

<sup>19</sup> "Jokowi Launches Maritime Doctrine to the World", *The Jakarta Post* (Jakarta), 13 November 2014. Available from <http://www.thejakartapost.com/news/2014/11/13/jokowi-launches-maritime-doctrine-world.html>.

<sup>20</sup> Food and Agriculture Organization, "Agreement on Port State Measure to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing", <[http://www.fao.org/fileadmin/user\\_upload/legal/docs/2\\_037t-e.pdf](http://www.fao.org/fileadmin/user_upload/legal/docs/2_037t-e.pdf)>. Opened for signature 22 November 2009 until 21 November 2010, entered into force on 5 July 2016.

in combatting IUU fishing through this ratification as the PSM Agreement is considered as a significant leap to uphold current efforts in combatting IUU fishing.<sup>21</sup>

Transnational Organized Fisheries Crime (TOFC) is a progressively major issue not only in terms of maritime security but also in its relations to “the sustainability of marine living resources”.<sup>22</sup> As part of IUU fishing, to some extent, TOFC can be deemed as core business of IUU fishing. It can be argued as in achieving their illegal objectives, IUU fishing perpetrators not uncommonly cross borders and poach fisheries resources illegally by using organized networks. Therefore, it is necessary to hand-in-hand with the other countries and the international community to address this problem. Indonesia Government has a deep awareness about organized criminal groups conducting IUU fishing by raising this matter before international fora.

During the 25th session of the Commission on Crime Prevention and Criminal Justice taken place in Vienna on May 2016, the Minister of Marine Affairs and Fisheries, Susi Pudjiastuti reaffirmed Indonesia’s view that ‘fisheries crimes and other fisheries-related crimes’ are related to IUU fishing. This crime terminology is attached to depict delinquency committed in the fisheries activities including organized crimes such as forced labour, trafficking in person and weapons smuggling. Based on its investigation, Indonesia found that several fishing vessels engaged in ‘transnational organized criminal group’ were also involved in those illicit activities. She reiterated further that fisheries crimes and fisheries-related crimes should be treated equally as the other transnational organized crimes receives. She was of the view that effective measures from international cooperation can be garnered if this approach is implemented.<sup>23</sup>

In the 2013 session on Crime Prevention and Criminal Justice and on International Drug Control in United Nations, Andi Rachmianto also echoed Indonesia’s commitment to have a closer collaboration and tougher efforts with international society in fighting “arising

---

<sup>21</sup> Emma Witbooi, “Illegal, Unreported and Unregulated Fishing on the High Seas: The Port State Measures Agreement in Context”, *The International Journal of Marine and Coastal Law*, vol. 29, (2014), p. 297.

<sup>22</sup> Mary Ann Palma-Robles, “Tightening the Net: the Legal Link between Illegal, Unreported and Unregulated Fishing and Transnational Organized Crime under International Law”, *Ocean Yearbook*, vol. 29 (2015) p. 144.

<sup>23</sup> Protecting our Waters from Fisheries Crime (see chap. I, footnote 18).

crimes” such as cybercrime, illegal transferring of traditional properties, illegal transferring of forest goods and IUU fishing activities.<sup>24</sup> Meanwhile, in the bilateral meeting between Australia-Indonesia during 9<sup>th</sup> Ministerial Forum, both the Minister of Foreign Affairs of Indonesia and the Minister for Foreign Affairs and Trade of Australia agreed to raise this issue by committing to combat IUU fishing and acknowledging the connection between illegal fishing and TOC groups. They also committed to exercise effective efforts in eradicating this practice, among others, from the perspective of the United Nations Convention Against Transnational Organized Crime (UNTOC). The ministers reiterated further their assurance to prevent and fight IUU fishing as referred to the Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation (Lombok Treaty).<sup>25</sup>

From above collaboration, it can be asserted that Indonesia Government has determined to fight against IUU fishing including fisheries crimes which are organized transnationally. However, the efforts should be accompanied with proper and adequate national legal and policy frameworks in its relations to relevant national and/or international instruments and practices. This thesis attempts to discuss Indonesia’s legal and policy measures to prevent, deter and eliminate IUU fishing and in its connection with TOFC within the framework of relevant practices of international law and policy.

In international law, there are two legally binding instruments that can be used as significant “tool kits” to overcome IUU fishing and fisheries crimes. They are the Agreement to

---

<sup>24</sup> On Agenda Items 108 on Crime Prevention and Criminal Justice and 109 on International Drug Control, 10 October 2013, Director for International Security and Disarmament, Ministry of Foreign Affairs of Indonesia made a statement. Available from <http://www.indonesiamission-ny.org/zymurgy/custom/statement.php?id=357#.VhTUdivCpCE>.

<sup>25</sup> Joint Ministerial Statement - 9th Australia-Indonesia Ministerial Forum on 12 November 2008 (media release). Available from [http://foreignminister.gov.au/releases/2008/9\\_aimf\\_statement.html](http://foreignminister.gov.au/releases/2008/9_aimf_statement.html). Lombok Treaty was signed on 13 November 2006 in Lombok, Indonesia. The Treaty provides a framework for security cooperation between Australia and Indonesia, including provisions on defence, law enforcement, counter-terrorism, intelligence, maritime security, aviation safety and security, proliferation of weapons of mass destruction, emergency cooperation, cooperation in international organisations on security-related issues and community understanding and people-to-people contact. The implementation of this treaty is strengthened further by Joint Understanding on a Code of Conduct between the Republic of Indonesia and Australia in Implementation of the Agreement between the Republic of Indonesia and Australia on the Framework for Security Cooperation signed on 28 August 2014 in Bali, Indonesia. Lombok Treaty is available from [http://treaty.kemlu.go.id/uploads-pub/1637\\_AUS-2006-0164.pdf](http://treaty.kemlu.go.id/uploads-pub/1637_AUS-2006-0164.pdf) while the Joint Understanding is available from [http://treaty.kemlu.go.id/uploads-pub/5554\\_AUS-2014-0212.pdf](http://treaty.kemlu.go.id/uploads-pub/5554_AUS-2014-0212.pdf).

Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the 1993 FAO Compliance Agreement) and Cape Town Agreement on the Safety of Fishing Vessels (the 2012 Cape Town Agreement). The former Agreement has the objective to enforce “the effectiveness of international fisheries conservation and management measures” which is specifically to fill a legal gap in fisheries arrangement of re-flagging<sup>26</sup> whereas the latter Agreement emphasizes on protection of the labourers having operation on fishing vessels.<sup>27</sup> Indonesia is not a State Party to both agreements.

This thesis mainly comprises four different parts. Part one is introduction consisting of the discussion on domestic and global problems of IUU fishing and TOFC. Part two provides ultimately policy perspectives on IUU fishing and TOFC. This part is divided into two chapters exercising backgrounds (international and domestic) and proposed policy measures as response to the loopholes identified. Part three encompasses international and domestic legal frameworks in preventing, deterring and eliminating IUU fishing and TOFC followed by identifying loopholes and proposing legal measures. Part four presents conclusions.

## **2. Thesis Statement.**

The existing Indonesia’s legal and policy frameworks on the prevention, deterrence and elimination of IUU fishing are inadequate to combat IUU fishing and TOFC despite some improvements. From the perspective of policy, it is important to prepare and conclude National Plan of Action on IUU Fishing of 2017-2012, undergo comprehensive study when outlining new policies, exercising multi-door policy, amend the duties of Task Force 115, secure the cooperation to combat IUU fishing and fisheries crimes and make Standard Operating Procedure (SOP) and practical guidelines as following up of Presidential Regulation Number 115/2015.

---

<sup>26</sup> William Edeson, David Freestone and Elly Gudmundsdottir, *Legislating for Sustainable Fisheries: A guide to Implementing the FAO Compliance Agreement and 1995 UN Fish Stocks Agreement*, (Washington DC: the World Bank, 2001), p. 2.

<sup>27</sup> Karen Sack, “Slavery at Sea; the Human Cost of Illegal Fishing”, *Huffington Post*, 31 July 2016. Available from [http://www.huffingtonpost.com/ocean-unite/slavery-at-sea-the-human-b\\_7912334.html](http://www.huffingtonpost.com/ocean-unite/slavery-at-sea-the-human-b_7912334.html)



In virtue of legal overview, it is suggested for Indonesia to amend the existing laws and regulations particularly Fisheries Law No 45/2009 as the amendment of Law No 31/2004 or make a law regarding the prevention, deterrence, and elimination of IUU fishing and provide its consent to be bound by the 1993 FAO Compliance Agreement and the 2012 Cape Town Agreement. Another proposed measure is to consider enacting a regulation like or incorporating the elements of the Lacey Act.

### **3. Purposes, Scope and Limitation.**

The purposes of this thesis are to provide analysis of domestic legal status and policy's overview within the context of relevant international legal and policy instruments and practices in combatting IUU fishing and TOFC.

Towards this end, this thesis will address the following objectives:

- 1) To identify and explore national and international legal and policy frameworks regarding IUU fishing and transnational organized fisheries crime;
- 2) To identify the possible legal and policy challenges in the years to come if Indonesia endorses IUU fishing and TOFC;
- 3) To analyze and to address gaps in the context of mainly domestic legal and policy frameworks and mechanisms of the topics concerned.

This research will involve a comprehensive analysis of the following:

- 1) The extent of Indonesia's legislations and policies pertaining to the prevention, deterrence and elimination of IUU Fishing and its connection with TOFC;
- 2) Laws and policies of the United States and South Africa on fisheries related to IUU Fishing and TOFC compared to that of Indonesia;
- 3) International legal and non-legally binding frameworks relevant to marine and fisheries resources sustainability and transnational organized crime;
- 4) The connection between IUU fishing and fisheries crimes that are organized transnationally;

This thesis primarily focuses on legal and policy analysis of the issues involved and other matters insofar as they are relevant and necessary. This thesis will not discuss extensive application of other transnational organized crimes except pertaining to fisheries.

#### **4. Significance of the Research.**

This research is of national and international significance. From domestic perspective, the result of my research will be a significant contribution to the development of relevant laws and regulations such as Law Number 31/2004 as amended by Number 45/2009 regarding Fisheries, Law Number 32/2014 concerning Marine Affairs, Law Number 8/2010 concerning Countermeasure and Eradication of Money Laundering along with the other relevant national regulations and policies regarding the prevention, deterrence and elimination of IUU Fishing and fisheries crime transnationally organized.

The topic of this thesis is also imperative for ocean affairs development in Indonesia as it has been the highest priority of the Ministers of Marine Affairs and Fisheries of Indonesia in the past and current years. It can be comprehended as Indonesia is endowed with vast marine and fisheries resources with more than 17,000 islands covered by 5.8 million square km in area. Indonesia has also the second longest coastline in the world after Canada.

IUU fishing is not a mere domestic problem but also international responsibility as some fish species are migratory or highly migratory. International cooperation is needed to overcome transnational problems such as IUU fishing and fisheries crime. Some research have been conducted by academics in connecting IUU fishing and fisheries crime transnationally organized, and this research will exercise further the relationship between those matters in particular policy and legal issues of Indonesia.

#### **5. Research Questions.**

This thesis will address the following principal research questions:

- 1) What are the legal and policy frameworks of Indonesia in addressing IUU fishing and fisheries crimes?
- 2) What are the gaps that exist in Indonesia's legislation and policy regarding IUU fishing and its connection with fisheries crime transnationally organized?
- 3) What are the lessons learned that can be drawn from legal and policy measures of the United States and South Africa concerning the matter?

4) What measures are necessary to combat IUU fishing and fisheries crimes transnationally organized within the scope of domestic legal and national policy frameworks?

## PART II POLICY PERSPECTIVES

### 1. International and Domestic Backgrounds.

In terms of perspective of policy, international and domestic backgrounds are imperative to provide comprehensive understanding about IUUF and TOFC. These backgrounds present clearer and more comprehensive understanding on how the policies are shaped. In determining certain proper policies, policy makers should observe and consider relevant domestic and international instruments so that the policies taken will adequately coherent with the developments domestically and internationally. This general overview applies to the discussions of the protection of sustainable marine ecosystem as well.

Particular attention is extended to IUU fishing as a major constraint globally threatening ocean ecosystem and sustainable fisheries. This activity also undermines conservation and management measures both in domestic and international levels.<sup>28</sup> This chapter presents related international and national policies on IUU fishing, transnational organized fisheries crimes (fisheries crimes) and fisheries-related crimes.

This chapter provides state practices of two countries, those are, the United States and South Africa in their determination to sustain marine ecosystem through policy efforts. State practices can be beneficial in drawing lessons learned both from positive and negative points of view. In general, according to Anastasia Telesetsky, countries “have not remained indifferent” in addressing IUU fishing and have embraced “a polycentric governance” method, by using management practices that have arisen and intersected in some diverse stages.<sup>29</sup> Main reasons to present two said countries are ultimately some profound policies practiced by them resulting to some positive outcomes.

In light of domestic view, Indonesia has determined to fight against IUU fishing and TOFC at all costs. As archipelagic country with abundance resources, Indonesia has profound interest

---

<sup>28</sup> National Oceanic and Atmospheric Administration (NOAA Fisheries), “Illegal, Unreported and Unregulated Fishing”. Updated 30 July 2016. Available from [http://www.nmfs.noaa.gov/ia/iuu/iuu\\_overview.html](http://www.nmfs.noaa.gov/ia/iuu/iuu_overview.html).

<sup>29</sup> Anastasia Telesetsky, “Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing and Transnational Organized Crime”, *Ecology Law Quarterly*, vol. 41(4) (2015) p. 961.

to secure those resources. After assuming post as Minister of Marine Affairs and Fisheries in 2014, Susi Pudjiastuti has been very active in combatting IUUF and TOFC. During 2nd Bali Tuna Conference (BTC) and the 5th International Coastal Tuna Business Forum (ICTBF), Minister Susi conveyed Indonesia's commitment to eradicate IUUF in areas within and beyond national jurisdiction. She identified IUU fishing is a major constraint as it is not only linked to 1.5 million tonnes of "illegal capture of fishery products" and economy's impact but also connected to environment considerations.<sup>30</sup> One of prominent measures endorsed and taken is sinking fishing vessels conducting IUU fishing. This measure will be elaborated in this chapter including current development of IUU fishing and TOFC.

## **1.1 International and Comparative Backgrounds.**

### **1.1.1 Recent Developments and Challenges.**

In discussing policy perspective from international background, it is important to touch upon a brief history of IUU fishing beforehand in respect of this paper's objective as an illustration on how the current situation has developed. Even though the terms "illegal", "Unreported", and "Unregulated" were formally adopted in International Plan of Action on IUU Fishing (IPOA-IUU) in 2001,<sup>31</sup> concerns and notions about IUU fishing activity were commenced in the beginning of 1990s. After the adoption of the 1982 United Nations Convention on the

---

<sup>30</sup> International Pole and Line Foundation, "Indonesia Underlines its Commitment to the 100% Eradication of IUU Fishing", 1 August 2016. Available from <http://ipnlf.org/news/indonesia-underlines-its-commitment-to-the-100-eradication-of-iuu-fishing>.

<sup>31</sup> FAO, *International Plan of Action to Prevent, Deter, Eliminate Illegal, Unreported and Unregulated Fishing*, adopted on 23 June 2001 at the 120<sup>th</sup> Session of the FAO Council. Hereinafter referred to as IPOA-IUU. Available from <http://www.fao.org/docrep/003/y1224e/y1224e00.htm>. (accessed 25 October 2015).

Illegal Fishing refers to activities conducted:

- (a) By nationals or foreign vessels in waters under the jurisdiction of any State without its express permission and in contravention to its laws/regulations; or
- (b) Conducted by vessels flying the flags of State parties to a relevant RFMO in contravention of the conservation/management measures of that organisation to which the State concerned is bound or of applicable international law; or
- (c) In violation of national laws or international obligations, including those by cooperating states to a relevant RFMO.

Unreported Fishing refers to fishing activities which:

- (a) Have not been reported, or have been misreported, to a relevant national authority in contravention to national laws and regulations; or
- (b) Have been undertaken in the area of competence of a relevant RFMO which have not been reported, or have been misreported, in contravention to the reporting procedures of that organisation.

Unregulated Fishing comprises fishing activities:

- (a) In an area of application of a relevant RFMO conducted by vessels without nationality, or by those flying the flag of a State not party to that organisation, or by a fishing entity in a manner not consistent with, or which contravenes, the conservation and management measures of the RFMO concerned; or
- (b) In areas, or for fish stocks, for which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with state responsibilities for the conservation of marine living resources under international law.

Law of the Sea (UNCLOS),<sup>32</sup> negotiations were established through the development of legally binding and non-legally binding instruments to fight against unsustainable fishing activities and to encourage the preservation of fisheries resources.<sup>33</sup> The 1995 United Nations Fish Stock Agreement (UNFSA)<sup>34</sup> and the 2009 Agreement on Port State Measure to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)<sup>35</sup> are very examples of hard mechanism while IPOA-IUU<sup>36</sup> and the 1995 FAO Code of Conduct for Responsible Fisheries ('Code of Conduct')<sup>37</sup> are prominent instances of 'soft law' as those are non-legally binding instruments.

In international level, marine ecosystem has been a global problem and world leaders' concern. They agreed to call immediate action to address IUU fishing through United Nations General Assembly (UNGA) resolution number A/RES/66/68 adopted on December 6, 2011. This resolution accentuates the solemn concern over IUU fishing and acknowledges it as one of continued greatest challenges to marine sustainability. It is necessary for countries to control effectively over their fishing vessels in order to prevent and deter them for conducting IUU fishing.<sup>38</sup>

UNGA also adopted two resolutions recognizing the possible linking between illegal fishing and transnational organised crimes through UNGA Resolution 67/79<sup>39</sup> and UNGA Resolution 68/71.<sup>40</sup> In addition to these resolutions, countries set several mechanisms as their strong commitment to sustain marine ecosystem and combat IUU fishing such as Agenda 21, the

---

<sup>32</sup> United Nations, *Convention on the Law of the Sea (UNCLOS)*, vol. 2225 No. 209.

<sup>33</sup> Denzil G.M. Miller and others, "An Action Framework to Address Illegal, Unreported and Unregulated (IUU) Fishing", *Australian Journal of Maritime and Ocean Affairs*, vol. 4(2) (2014) p. 71.

<sup>34</sup> United Nations, *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, vol. 2167, No. 3.

<sup>35</sup> FAO, *Agreement on Port State Measure to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, the Agreement was open for signature at FAO from 22 November 2009 until 21 November 2010, by all States and regional economic integration organizations.

<sup>36</sup> FAO, *the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*. Available from <http://www.fao.org/docrep/003/y1224e/y1224e00.htm> (accessed 25 October 2015).

<sup>37</sup> FAO, *the 1995 FAO Code of Conduct for Responsible Fisheries*. Available from <http://www.fao.org/docrep/005/v9878e/v9878e00.htm> (accessed 25 October 2015).

<sup>38</sup> United Nations General Assembly Resolution A/RES/66/68 adopted on 6 December 2012, paragraphs 43 and 44.

<sup>39</sup> United Nations General Assembly Resolution A/RES/67/79 adopted on 11 December 2012, paragraph 68.

<sup>40</sup> United Nations General Assembly Resolution A/RES/68/71 adopted on 9 December 2013, paragraph 72.

Future We Want, Code of Conduct for Responsible Fisheries, International Plan of Action on IUU fishing and the other relevant non legally binding instruments.

The first formal meeting to identify the elements of IUU fishing was taken place in United Nations Conference on Environment and Development (UNCED) in 1992. The delegates of conference have reached some agreements including what is known as Agenda 21. Chapter 17 of Agenda 21 encompasses some aspects identified as main hurdles to the sustainable management of fisheries in areas under national jurisdiction and in water column beyond national jurisdiction. For high seas fisheries, the identified problems, among others, are “unregulated fishing, overcapitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and the lack of sufficient cooperation between States”.<sup>41</sup>

Countries whose vessels flying their flags fishing in high seas are encouraged to strengthen cooperation bilaterally, sub-regionally and globally to manage especially highly migratory species and straddling stocks. The cooperation should also settle problems in fishing activities including in biological information, fisheries statistic and upgrading data management.<sup>42</sup> Meanwhile for areas under national jurisdiction, major issues affecting fisheries are “local overfishing, unauthorized incursions by foreign fleets, ecosystem degradation, overcapitalization and excessive fleet sizes, under evaluation of catch, insufficiently selective gear, unreliable databases, and increasing competition between artisanal and large-scale fishing, and between fishing and other types of activities”.<sup>43</sup> In this area, three measures recommended to focus on are “management-related activities; data and information; as well as international and regional cooperation and coordination”.<sup>44</sup>

In 2002, world leaders attended World Summit on Sustainable Development in Johannesburg, South Africa. In this forum, they agreed to adopt the Johannesburg

---

<sup>41</sup> *Transforming Our World: the Agenda for Sustainable Development*, General Assembly Resolution 70/1, UNGAOR, 17<sup>th</sup> Sess, Agenda Item 15 and 116, UN Doc A/RES/70/1 (21 October 2015), para 17.45. *Hereinafter referred to as Agenda 21.*

<sup>42</sup> Agenda 21, para. 17.45

<sup>43</sup> Agenda 21, para. 17.71.

<sup>44</sup> Agenda 21, para. 17.77-17.90.

Declaration and its Plan of Implementation.<sup>45</sup> It was recognized the depletion of fish stocks and the loss of biodiversity in this political document.<sup>46</sup> The leaders acknowledged the importance of Agenda 21 and Rio Declaration on Environment and Development in playing its pivotal role to set up a new schema for sustainable development. Under the auspices of the United Nations, between Rio and Johannesburg conferences, countries had several meetings to define ‘a comprehensive vision’ of humanity.<sup>47</sup>

In the Plan of Implementation of Johannesburg Declaration, it is necessary to ensure the development of the oceans sustainably by conducting coordination and cooperation effectively in regional and global levels amongst related institutions by, among others, calling countries to ratify and accede UNCLOS, promoting the implementation of Chapter 17 of Agenda 21, establishing proper coordination mechanisms on oceans and coastal matters in the United Nations systems, encouraging the implementation of the ecosystem approach as referred to the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem<sup>48</sup> and the Conference of Parties to the Convention on Biological Diversity<sup>49</sup>, enhancing regional coordination and cooperation amongst related regional bodies including Regional Fisheries Management Organizations and taking into account the open-ended informal consultative process initiated by the United Nations General Assembly through Resolution 54/33.<sup>50</sup>

This plan of implementation further requires countries, *inter alia*, to foster or restore stocks to the maximum sustainable yield urgently not later than 2015 to the best extent, ratify or accede related the United Nations and related fisheries agreement or arrangement particularly United Nations Fish Stock Agreement and the 1993 Food and Agriculture Organization Compliance Agreement, apply the 1995 Code of Conduct for Responsible Fisheries, Implement International Plan of Actions under the Food and Agriculture

---

<sup>45</sup> *Report of World Summit on Sustainable Development (WSSD), Johannesburg, 26 August-4 September 2002 (A/CONF.199/20)*, para 1.

<sup>46</sup> *Ibid*, para 1. para 13.

<sup>47</sup> *Ibid*, paras 8-9.

<sup>48</sup> See Food and Agriculture Organization of the United Nations document C200/INF/25, Appendix I.

<sup>49</sup> See United Nations Environmental Program document UNEP/CBD/COP/5/23, annex III.

<sup>50</sup> *Report of World Summit on Sustainable Development*, para 30.



Organization including IPOA-IUU fishing and eliminate subsidy practices contributing to IUU fishing and over-capacity.<sup>51</sup>

The United Nations continues to maintain and secure sustainable development globally through the adoption of the General Assembly Resolution A/RES/70/1 on 25 September 2015 concerning the 20130 Agenda for Sustainable Development.<sup>52</sup> The agenda is determined to be “a plan of action for people, planet and prosperity”. There are 17 goals and 169 targets for sustainable development in this document demonstrating the determination of a new universal agenda. Those goals and targets, commenced to take into effect on 1 January 2016, are projected to be applied until 2030 in the fields of urgent attention needed for humankind and the world<sup>53</sup>.

The most related agenda to ocean affairs lies in Goal 14, that is, Conserve and Sustainably Use the Oceans, Seas and Marine Resources for Sustainable Development. In this goal, there are 7 (seven) targets to achieve on the issues of marine pollution, marine and coastal ecosystem, ocean acidification, fishing activities, conservation of coastal and marine areas, fisheries subsidies and economic benefits to small island developing states and least developed states.<sup>54</sup> Particular attention concerning IUU fishing is paid to Agenda 14.4 on fishing activities. By 2020, member countries of the United Nations should: a) apply management measures when harvesting fish; b) eliminate overfishing, IUU fishing and destructive fishing activities; and c) apply management plans based on science aiming to revive fish stocks, at least to the maximum sustainable yield level.<sup>55</sup>

IUU fishing and transnational organized fisheries crimes have been an emerging issue in UNODC. As guardian of United Nations Convention on Transnational Organized Crime and its supplementary protocols, UNODC issued publication on the connection between IUU fishing and transnational organized crimes. In this report, different outlook is taken by

---

<sup>51</sup> *Report of World Summit on Sustainable Development*, para 31.

<sup>52</sup> *Transforming Our World: the Agenda for Sustainable Development*, GA Res 70/1, UNGAOR, 17<sup>th</sup> Sess, Agenda Item 15 and 116, UN Doc A/RES/70/1 (21 October 2015).

<sup>53</sup> *Ibid*, preamble.

<sup>54</sup> The relevance of Agenda 2030 and sustainable marine resources including IUU fishing practices is discussed in Goal 14.

<sup>55</sup> *Transforming Our World: the Agenda for Sustainable Development*, Goal 14, para 14.4.

referring to only illegal fishing, without unreported and regulated fishing, as it is deemed to have equal context to fisheries crime with broader perspective.<sup>56</sup> This report presented many cases depicting close relationship between “fishing industry and other transnational criminal activities”. It also discovered that human trafficking activities in the fishing industry occurred in the most part of the world. The other crimes such as cocaine trafficking and the other illicit drugs are found to be transported by fishing vessels.<sup>57</sup>

UNODC and World Wildlife Fund (WWF) co-organized an Expert Group Meeting on Fisheries Crime on 24 to 26 February 2016 in Vienna. There were three main objectives of this meeting. First was identifying the most effective means to address “transnational organized fisheries crimes” through law enforcement and criminal justice including developing new ways, secondly was discussing tools to promote international collaboration and inter-institutions cooperation in “investigating and prosecuting fisheries crimes”, and thirdly was elaborating the ways for international society to receive support for “capacity building and opportunities to improve knowledge and skills to better address fisheries crime along the entire value chain” from UNODC.<sup>58</sup>

In this forum, fisheries crime was defined as “serious offences within the fisheries resource sector that take place along the entire food products supply chains and associated value chains, extending into the trade, ownership structures and financial services sectors”. The “serious” term was not associated to the definition found in the United Nations Convention on Transnational Organized Crime.<sup>59</sup> It was meant to have impact to community extensively. Fisheries crime was also regarded to have connection with other criminal offences and generally “transnational, largely organized, and can have severe adverse social, economic and environmental impacts both domestically and internationally”.<sup>60</sup>

---

<sup>56</sup> United Nations Office on Drugs and Crime (UNODC), *Combatting Transnational Organized Crime Committed at Sea: Issue Paper*, (2013) p. 39.

<sup>57</sup> *Ibid*, p. 40.

<sup>58</sup> *Outcome of the UNODC/WWF Fisheries Crime Expert Group Meeting 2016*, Commission on Crime Prevention and Criminal Justice, 25<sup>th</sup> sess, E/CN/14/2016/CRP.2 (11 May 2016), p. 3.

<sup>59</sup> See Article 2(b) of the United Nations Convention on Transnational Organized Crime. “Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

<sup>60</sup> *Outcome of the UNODC/WWF Fisheries Crime Expert Group Meeting 2016*, p. 4.

The measures to eliminate IUU fishing has been systemically undergone through UN conferences and other international fora. Fisheries crime is part of IUU fishing. Both terms have severe negative impacts and transnational in character. The two different organizations, those are, UNODC and FAO, have main roles in advocating member states to develop their domestic policy reforms. Nevertheless, as conveyed by Gunnar Stølsvik, Chairperson of the INTERPOL Fisheries Crime Working Group, in ASEAN Regional Forum Workshop on IUU Fishing, it was necessary to differentiate between the roles of FAO (IUU fishing) and UNODC (fisheries crimes).<sup>61</sup> This distinction is imperative for each organization to be more focus in addressing the problem. Moreover, regular collaboration and coordination between the two organizations should also be organized regularly.

### **1.1.2 Practices of Other Countries as Lessons Learned.**

#### **1.1.2.1 The United States.**

The Government of United States (U.S) has very much concern on IUU fishing and put it as national priority since the management and conservation of fish stocks are undermined and the sustainable level of fisheries is threatened by this activity.<sup>62</sup> Some policies such as the formation of Presidential Task Force on Combating IUU Fishing and Seafood Fraud, Ratification to Port State Measure Agreement as well as port entry and access restrictions to port services have been endorsed by the US government to tackle IUU fishing. In addition, the US government also has powerful tools through the stipulation of Magnuson-Steven Reauthorization Act and the Lacey Act in its domestic legislation system.<sup>63</sup>

The establishment of Presidential Task Force on Combatting IUU fishing marks further serious step taken by the U.S Government to combat IUU fishing. This task force was formed under a Presidential Memorandum on Establishing a Comprehensive Framework to Combat Illegal, Unreported and Unregulated Fishing and Seafood Fraud on 17 June 2014. This team is inter-agency coordinating unit comprising of 14 government institutions, co-chaired by

---

<sup>61</sup> Co-Chairs' Summary Report of ASEAN Regional Forum Workshop on Illegal, Unreported and Unregulated (IUU) Fishing conducted in Bali on 19-21 April 2016. The workshop was co-chaired by Indonesia, Timor-Leste and United States Mission to ASEAN. Several representatives of ARF attended the meeting.

<sup>62</sup> U.S Department of State, "Illegal, Unreported and Unregulated Fishing". Updated on 28 September 2016. Available from <http://www.state.gov/e/oes/ocns/fish/illegal/>.

<sup>63</sup> Eva de Coning and Emma Witbooi, "Towards a new 'Fisheries Crime' Paradigm: South Africa as an Illustrative Example", *Marine Policy*, vol.60 (2015) p. 212.

Department of Commerce and Department of State.<sup>64</sup> It has authority to reveal recommendations through the National Ocean Council and circulated in the Federal Register. Those 15 recommendations are for agencies “to take concrete and specific measures to combat IUU fishing and seafood fraud” along the supply chain.<sup>65</sup>

In shaping the formulation of those recommendations, it is important to note that the task force took several steps. Most importantly is engaging public participation to obtain public’s opinion and develop the recommendations. Interestingly, this process involved not only domestic but also relevant countries having interest with fisheries and marine coastline. Following measure is finding potential loopholes by reviewing the coordination amongst existing related institutions in combatting IUU fishing and seafood fraud.<sup>66</sup> The application of recommendations principally fall under 4 (four) categories: Firstly, fight against IUU Fishing and seafood fraud in the level of international. Secondly, the strengthening of law enforcement and the promotion of enforcement means. Thirdly, establishing and extending cooperation with non-federal entities to investigate and eradicate seafood deception and the transaction of IUU seafood products in the U.S. Fourthly, disseminating information available in seafood products through mechanism of traceability.<sup>67</sup>

In those 15 recommendations, Task Force has determined the rationale, implementing steps and timeframe. The recommendations are as follows: <sup>68</sup>

- 1) Following up Port State Measures Agreement by passing its implementing legislation and promoting its implementation;
- 2) Best practices for catch documentation and data tracking as well as the other measures such as boarding and inspection in high seas, MCS (Monitoring, Control and

---

<sup>64</sup> Co-chaired by the Departments of State and Commerce through NOAA, the Task Force is made up of 12 other agencies. They include: the Council on Environmental Quality; the Departments of Agriculture, Defense (Navy), Health and Human Services (FDA), Homeland Security (Customs and Border Protection, Immigration and Customs Enforcement, U.S. Coast Guard), the Interior (U.S. Fish and Wildlife Service), and Justice; Federal Trade Commission; Office of Management and Budget; Office of Science and Technology Policy; U.S. Agency for International Development, National Security Council; and Office of the U.S. Trade Representative.

<sup>65</sup> Presidential Task Force on Combating IUU Fishing and Seafood Fraud, “Action Plan for Implementing the Task Force Recommendations”, (2014), p. 3.

<sup>66</sup> Ibid, p. 9.

<sup>67</sup> Ibid, p. 3.

<sup>68</sup> Ibid, p. 10-39.

- Surveillance), port state control, promote the adoption of monitoring in Regional Fisheries Management Organizations (RFMOs);
- 3) Promoting maritime domain awareness including analyzing and monitoring threat of IUU fishing;
  - 4) Using Free Trade Agreements to address IUU fishing and seafood fraud;
  - 5) Eliminating fishery subsidies contributing excess fishing capacity. Overfishing and IUU fishing;
  - 6) Building capacity for the management of sustainable fisheries and the elimination of IUU fishing;
  - 7) Diplomatic priority when combatting IUU fishing and seafood fraud;
  - 8) Sharing and analyzing information and resources “to prevent IUU fishing or fraudulently labeled seafood from entering U.S commerce”;
  - 9) Promoting Custom Mutual Assistance Agreement by exchanging information and encouraging “foreign customs administrations”;
  - 10) Standardizing and clarifying regulations when identifying the species, common name and origin of seafood;
  - 11) Working with state and local enforcement institutions to disseminate sharing of information and develop means addressing IUU fishing and seafood fraud;
  - 12) Broadening agency enforcement authorities;
  - 13) Establishing a regular forum with related stakeholders;
  - 14) and 15) Traceability program. The two recommendations encompass one program with two stages. First phase is identifying and developing within 6 months any information and operational standards of traceability while second phase is establishing a risk-based traceability program as continuation of first phase.

In the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006, there is an acknowledgement for international cooperation to combat IUU fishing effecting sustainable fisheries around the globe. This Act amended the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act). This Moratorium Act was amended by the Shark Conservation Act to upgrade in conserving sharks in domestic and international levels. It is required by the Moratorium Act for NOAA to report

to Congress biennially. This report should list countries that have incomparable regulatory measures to the U.S.<sup>69</sup>

In the Report to Congress pursuant to Section 403(a) of the MSRA, there exist four countries identified as engaging IUU fishing based on Conservation and Management Measures (CMMs) during 2013 and/or 2014. Those are Colombia, Ecuador, Nicaragua and Portugal. This is an improvement from 2013 report identifying 10 countries, namely: Columbia, Ecuador, Ghana, Mexico, Panama, South Korea, Spain, Tanzania and Venezuela.<sup>70</sup> As following up of this listing, either positive or negative response will be obtained by those states after having consultation with the United States. For countries receiving negative response, they will be denied to enter the U.S ports and navigate in the U.S waters.<sup>71</sup>

Another important regulatory framework of the U.S is Lacey Act. This Act was adopted in 1900 and amended in 1981. Through this Act, the U.S Government has jurisdiction to bring its nationals committing IUU fishing activities, even when operating on board the foreign fishing vessels before the court.<sup>72</sup> In this Act, “It is unlawful for any person to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported or sold in violation of any law or regulation of any State or in violation of a foreign law”.<sup>73</sup> This Act is considered an effective tool in addressing IUU fishing by providing “long arm national jurisdiction” as applied in *Bengis* case.<sup>74</sup>

### **1.1.2.2 South Africa**

In South Africa, fisheries are conceived as an important sector in terms of employment for both unqualified and semi-unqualified workers, particularly in the Western Cape. Department of Agriculture, Forestry and Fisheries of South Africa estimated that there were around 27,000 labours directly employed and 100,000 workers indirectly dependent in the

---

<sup>69</sup> National Oceanic and Atmospheric Administration (NOAA), “Magnuson-Stevens Reauthorization Act”. Updated on 28 September 2016. Available from [http://www.nmfs.noaa.gov/ia/iuu/msra\\_page/msra.html](http://www.nmfs.noaa.gov/ia/iuu/msra_page/msra.html).

<sup>70</sup> NOAA Fisheries, *Improving International Fisheries Management: February 2015 Report to Congress* (2015) 4.

<sup>71</sup> Telesetsky, “Laundering Fish in the Global Undercurrents”, (see chap. II, footnote 29) p. 976.

<sup>72</sup> Mary Ann Palma, “Combatting IUU Fishing: International Legal Developments”, in *Navigating Pacific Fisheries: Legal and Policy Trends in the Implementation of International Fisheries Instruments in the Western and Central Pacific Region*, Q. Hanich and M. Tsamenyi, eds, (ANCORS, University of Wollongong, 2009).

<sup>73</sup> The United States, Lacey Act, Title 16, § 3372(a)(1).

<sup>74</sup> Palma-Robles, “Tightening the Net”, (see chap. II, footnote 22) p. 163.

industry of fishing.<sup>75</sup> The main government institution to have responsibility in governing fishing activities nationally in South Africa is Department of Agriculture, Forestry and Fisheries (DAFF).<sup>76</sup> In virtue of regulation framework, according to Vrancken, “fisheries legislation has a long history in South Africa Law”.<sup>77</sup>

South Africa has enacted the Marine Living Resources Act (MLRA) 18 of 1998 regulating the utilization of marine resources as main reference to fisheries law. The principles and objectives of MLRA are, among others, related to optimum utilization, conservation, precautionary approaches, ecological balance, protection to the ecosystem, preservation to marine biodiversity, marine pollution, engagement in the process of decision-making, national obligation under international law, fishing industry restructuring, equal access promotion, fisheries management, fish allocation through a multi-species approach.<sup>78</sup> This Act altogether with the more general National Environmental Management Act 107 of 1998 (the 1998 National Environmental Management Act) provide main regulation for the enforcement of administrative and/or criminal as well as punishments for the violations on fisheries.<sup>79</sup>

In the preamble of the 1998 National Environmental Management Act, the environment should be protected through reasonable legislative and other measure that, among others, promote conservation as well as secure ecological sustainable development and use of natural resources while promoting justifiable economic and social development.<sup>80</sup> Under

---

<sup>75</sup> The Department of Agriculture, Forestry and Fisheries of South Africa, “the Strategic Plan for the Department of Agriculture, Forestry and Fisheries 2013/14 to 2017/2018”, March 2013 Directorate of Communication Services, Pretoria, p. 17.

<sup>76</sup> Department of Agriculture, Forestry and Fisheries of South Africa, “Vision, Mission and Values“. Updated on September 2016. Available from <http://www.daff.gov.za/daffweb3/About-Us/Structure-and-Functions>.

<sup>77</sup> Patrick H. G. Vrancken, *South Africa and the Law of the Sea*, (London and Boston: Martinus Nijhoff Publishers, 2011) p. 294.

<sup>78</sup> This Act has been amended through Marine Living Resources Amendment Act 68 of 2000, National Environmental Management: Protected Areas Act 57 of 2003 and Marine Living Resources Amendment Act 5 of 2014. See Chapter 1 (Introductory Provisions) for objectives and principles. There are 4 (four) additional objectives and principles as the amendment of Act 5 of 2014, namely: national obligation under international law, equal access promotion, fisheries management and fish allocation through a multi-species approach.

<sup>79</sup> Coning and Witbooi, “Towards a New “Fisheries Crime”, (see chap. II, footnote 63) p. 211.

<sup>80</sup> South Africa, National Environmental Management Act 107 of 1998, Preamble.

Part 3 of Judicial Matters, this Act provides legal standing to enforce environmental laws<sup>81</sup> and private prosecution<sup>82</sup> and criminal proceedings.<sup>83</sup>

Countries in Africa have problems with illegal foreign fishing vessels, particularly from China, including South Africa. As revealed by Greenpeace, there was a dramatic increase of Chinese fishing vessels catching fish in Africa, from only 13 in 1985 to 462 in 2013. The investigation discovered that 114 of illegal fishing vessels operated in Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone waters during eight years.<sup>84</sup> As disclosed by Van As, South Africa poses illegal fishing and transnational organized crimes issue by Chinese boats, so has the occurrence in high seas.<sup>85</sup> In a recent case, Chinese vessels were fined for R1.3 million (around US\$91,000) by South Africa authorities for undergoing unlawful fishing such as the possession of fishing device without license. As the offenders are highly organized, financially capable and transnationally operated in doing the crimes, such trial infrequently occurs.<sup>86</sup>

As experienced by the other countries, South Africa encounters IUU fishing. This activity in South Africa occurs not only in small-scale fisheries but also in “commercial” fishing.<sup>87</sup> According to assessment from DAFF, marine living resources are regarded as fully exploited and “high-value species” are extensively overexploited in “commercial fisheries”. The decline of Abalone and Patagonian stocks as a very example as result of IUU fishing activities. The sustainability of other fish species such as Hake and Pilchards, known as the important commodity in South Africa fisheries industry, are also affected by IUU fishing in

---

<sup>81</sup> Ibid, Part 3, Article 32.

<sup>82</sup> Ibid, Part 3, Article 33.

<sup>83</sup> Ibid, Part 3, Article 34.

<sup>84</sup> “China Illegally Fishing off Coast of West Africa, Greenpeace Study Reveals”. *The Guardian* (China), 20 May 2015. Available from <https://www.theguardian.com/world/2015/may/20/china-illegally-fishing-off-coast-of-west-africa-greenpeace-study-reveals>.

<sup>85</sup>, “Tackling Crime in High Seas”, *The Star* (South Africa), 18 May 2016. Available from <https://news.nmmu.ac.za/news/media/Store/documents/2016/Heather-Dugmore-Tackling-crime-on-high-seas.pdf>.

<sup>86</sup> Hennie Van As, “Africa Needs Collaboration and Support to Tackle Crime at Sea”, *the Conversation*, 13 July 2016. Available from <https://theconversation.com/africa-needs-collaboration-and-support-to-tackle-crime-at-sea-61828>.

<sup>87</sup> Coning and Witbooi, “Towards a New “Fisheries Crime”, (see chap. II, footnote 63) p. 209.



more current cases. In addition, lobsters and sharks were reported also as the target of poaching.<sup>88</sup>

For the execution of the provisions of MLRA including combatting IUU fishing, fishery control officers is the primary government officials having authority to enforce it.<sup>89</sup> South Africa has determined to fight against IUU fishing and fisheries crimes through some initiatives such as cooperation between international police and PescaDOLUS (independent research network) and enhanced collaboration between Monitoring, Surveillance and Control Unit of Department of Agriculture, Forestry and Fisheries (DAFF) and the South Africa Police.<sup>90</sup>

As championed by Centre for Law in Action of the Nelson Mandela Metropolitan University (NMMU), the Department of Trade and Industry and Fisheries of Norway has approved to establish a law enforcement academy through a project called FishFORCE in the university. After initiating previous work between PescaDOLUS and Norway Government, Centre for Law in Action proposed a further collaboration with Norway Government through the project aiming to fight against fisheries crimes and fisheries-associated crimes in the sea. This cooperation was affirmed by the signing of the agreement on June 6<sup>th</sup>, 2016 during the conference on Operation Phakisa and the Ocean Economy in Port Elizabeth. The project is in the form of an academy by providing training for related government officials such as “Fisheries Control Officers, police officers and prosecutors” in South Africa, along the coastlines of East Africa and Namibia. Further collaboration will be extended to countries under Indian Ocean Rim including Indonesia.<sup>91</sup>

## **1.2 Domestic Background.**

---

<sup>88</sup> Department of Environmental Affairs of Republic of South Africa, *State of the Environment: State of South Africa's Fisheries* (Pretoria, 2012) p. 3.

<sup>89</sup> South Africa, MLRA, Chapter 6 (Law Enforcement), Section 51 concerning Powers of Fishery Control Officer.

<sup>90</sup> Coning and Witbooi, “Towards a New “Fisheries Crime”, (see chap. II, footnote 63) p. 212.

<sup>91</sup> Nelson Mandela University, “NMMU in R50M Deal with Norway”, 6 June 2016. Available from <https://news.nmmu.ac.za/News/NMMU-in-R50m-deal-with-Norway>. PescaDOLUS is the international research and capacity-building partnership on fisheries crime between South Africa and Norway.

### 1.2.1 Recent Developments: Indonesia's Measures to Combat IUUF and TOFC.

As archipelagic country in Southeast Asia, Indonesia lies between the continents of Asia and Australia surrounded by two oceans, Indian Ocean in the southern part and Pacific Ocean in the northern part. Indonesia is located in a strategic location astride or along major sea lanes from Indian Ocean to Pacific Ocean as well. Approximately Indonesia has 17,508 islands and 81,000 km coastline. This coastline is determined as second longest in the world after Canada. In total, Indonesia is covered by 5.8 million square kilometers of marine water comprising of 3.1 million kilometers of waters in territorial zone (<12 miles) and 2.7 million kilometers of Exclusive Economic Zone (EEZ) (12-200 miles).<sup>92</sup> In proportion, it is assessed that Indonesia's territory encompasses marine waters more than 50%. By occupying that total number of area, Indonesia is acclaimed as the largest archipelagic country in the world and the world's third largest EEZ.<sup>93</sup> Taking into account the comparison between EEZ and territorial waters, the scope of sovereign rights to explore marine living resources and non-marine living resources EEZ offers huge potentials for Indonesia.

In light of biodiversity, as disclosed by Sudirman, former Director General of Marine, Coasts and Small Islands, the MMAF of Indonesia, Indonesia is situated at the center of the Coral Triangle. This area is "home to the richest marine biodiversity on Earth". In terms of coral ecosystem, Indonesia is prominent for the diversity encompassing 18 percent of coral reefs in the world, more than 70 genera and 500 coral species, 2,500 fish species, 2,500 mollusk species, 1,500 Crustacea species and various marine biota.<sup>94</sup> In keeping fisheries sector sustainable, waters of Indonesia are managed into "eleven Fisheries Management Areas (FMAs) (Figure 1)".<sup>95</sup> This division can be discerned as efforts to make management of fisheries to be more focus and easier to control. It can be understood as each FMA has its own characteristics and challenges so the solutions to address the problems arising out should be also specific. From the larger perspective, this method of division is aimed to

---

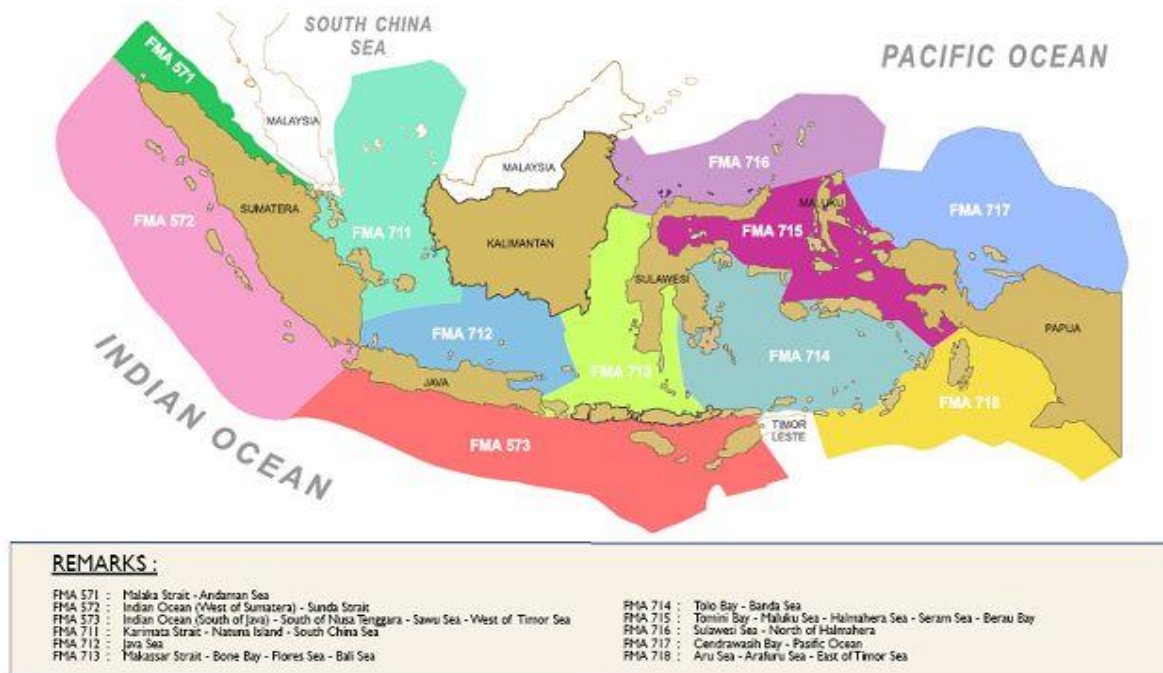
<sup>92</sup> Hari E Irianto and others, "Indonesia National Report to the Scientific Committee of the Indian Ocean Tuna Commission 2015", *Research and Development Agency of the Ministry of Marine Affairs and Fisheries of Indonesia*, (2015) p. 5.

<sup>93</sup> John G. Butcher, "Becoming an Archipelagic State: the Juanda Declaration of 1957 and the 'Struggle' to Gain International Recognition of the Archipelagic Principle" in *Indonesia Beyond the Water's Edge. Managing in Archipelagic State*, R. B Cribb and Michele Ford, eds. (Institute of Southeast Asia Studies, 2009) p. 28.

<sup>94</sup> Huffard, C.L. and others. "Geographic Priorities for Marine Biodiversity Conservation in Indonesia", (Ministry of Marine Affairs and Fisheries and Marine Protected Areas Governance Program. Jakarta-Indonesia, 2012), p. 105.

<sup>95</sup> Hari E Irianto and others, "Indonesia National Report", (see chap. II, footnote 92), p. 5.

make ocean resources management in Indonesia’s jurisdiction more integrated and coordinated.



**Figure 1: Indonesia Fisheries Management Areas**

Due to its strategic position at the juncture of two oceans, Indonesia has problems on maritime affairs such as maritime security and marine ecosystem. Indonesia should also delineate its maritime zone and delimitate its borders with neighboring countries having both in the positions of opposing countries and adjacent states. All three aspects of maritime security, marine ecosystem and neighboring states are interrelated significantly in shaping proper ocean governance and maritime policy of the country.

From the view of marine environment, Indonesia’s richness of ocean resources and marine ecosystem offer not only opportunities but also challenges. From fisheries activity, the potentials of Indonesia’s marine resources make Indonesia as one of leading nations in fisheries production particularly from marine fisheries. The latest report of FAO on the circumstance of global fisheries and aquaculture 2014 revealed that Indonesia is the second largest producer of capture fisheries in 2012 with China in the first and the U.S in the third position.<sup>96</sup> It is acknowledged also that according report submitted to RFMOs in 2014, Indonesia is the world’s biggest tuna fishing country, contributing to more than 620,000

<sup>96</sup> FAO, *the State of World Fisheries and Aquaculture 2014*, (see chap. I, footnote 3), p. 10.

metric tons.<sup>97</sup> As a top tuna fishing nation, Indonesia has contributed 15 percent of global tuna production in 2009, followed by the Philippines, China, Japan, Korea, Taiwan, and Spain”. Nevertheless, in exporting tuna for global trade, Indonesia only contributes about 4 percent in 2010.<sup>98</sup>

As mandated by FAO International Plan of Action (IPOA) IUU Fishing, countries are encouraged to establish National Plan of Action (NPOA) IUU Fishing for the implementation in their national level. Indonesia has established NPOA IUU Fishing based on Ministerial Decree Number KEP.50/MEN/2012 on National Plan of Action (NPOA) to Prevent and Combat Illegal, Unreported and Unregulated Fishing of 2012-2016. This NPOA-IUU Fishing aims to be a reference for related departments under the MMAF to prevent and eliminate IUU fishing.<sup>99</sup> Principally this document consists of Indonesia’s state of capture fisheries, IUU fishing, plan of action and time schedule to prevent and combat IUU fishing from 2012-2016. This document covers IUU fishing practices as referred to IPOA-IUU Fishing.

In the case of Indonesia, illegal fishing is most commonly conducted by foreign fishing vessels particularly from neighboring states. Those vessels have entered into not only into Indonesia’s EEZ but also archipelagic waters. In terms of fishing gears, those illegal vessels mostly “use purse seine and trawl”. Moreover, when fishing, the vessels are not equipped with License for Fishing (SIPI) and License for Fish Transporting Vessel (SIKPI), fishing in different areas as determined in fishing license, using prohibited fishing gears, counterfeit fishing license, vessels’ document manipulation, fishing without Sailing Approval Letter (SPB), deactivating VMS transmitter and other monitoring device, unloading fish without license, landing catches without informing specific ports and fishing by Indonesia’s fishing vessels in other countries’ jurisdiction without securing Indonesia’s government and related countries concerned.<sup>100</sup>

---

<sup>97</sup> Grantly Galland and others “Netting Billions: A Global Valuation of Tuna”, *the PEW Charitable Trusts*, (2016) p. 3.

<sup>98</sup> Sustainable Fisheries Partnership, “Indonesia Tuna Fishery Improvement Project”. Updated on 4 August 2016. Available from <http://www.sustainablefish.org/fisheries-improvement/tuna/indonesia-yellowfin-tuna>.

<sup>99</sup> MMAF, “National Plan of Action on IUU Fishing”, *Director General of Surveillance or Marine and Fisheries Resources and Japan International Cooperation Agency*. Updated in 2016. Available from <http://rpoa-iuu.org/images/pdf/npoa/Indonesia.pdf>, p. 3.

<sup>100</sup> *Ibid*, p. 14-16.

Furthermore, unreported fishing in Indonesia generally is related to data. Fishing vessels “have not reported the actual catches or improperly / incorrectly reported” generally to evade tax. This activity encompasses to conduct transshipment without reporting to the relevant authorities, “fishing vessels and fishing carrier vessel do not report at the port base in accordance with the license granted” and transporting its catch to foreign countries<sup>101</sup> while unregulated fishing activity that generally occurs in Indonesia is in the form of sport fishing.<sup>102</sup>

As part of national commitment to combat IUU fishing, MMAF has also developed a number of policies to fill loopholes that occur such as moratorium of fisheries license for ex foreign fishing vessels. These license encompasses License for Fishing (SIPI), License for Fish Transporting Vessel (SIKPI) and Fisheries Business License (SIUP)<sup>103</sup> for the vessels more than 30 gross tons.<sup>104</sup> This policy is divided into two phases. Phase one is stipulated through Ministerial Regulation Number 56/PERMEN-KP/2014 concerning Moratorium of Fisheries License for Ex Foreign Fishing Vessels in Indonesia Fisheries Management Area. The duration of this ministerial regulation is six months, from November 3<sup>rd</sup>, 2014 until April 30<sup>th</sup>, 2015.<sup>105</sup> After being reviewed by MMAF, this first stage was continued to the second stage through Ministerial Regulation Number 10/PERMEN-KP/2015 as Amendment to Ministerial Regulation Number 56/PERMEN-KP/2014. The only amendment was to extend moratorium policy into another 6 (six) month until October 31<sup>st</sup>, 2015.<sup>106</sup> The main objectives of the ministerial regulations are to promote sustainable fisheries management and address IUU Fishing in Indonesia Fisheries Management Area.<sup>107</sup>

Moratorium policy is not only addressing the problem of IUU Fishing as such, but also pertaining to non-tax state revenue (Pendapatan Nasional Bukan Pajak/PNBP) from the

---

<sup>101</sup> Ibid, p. 14-16.

<sup>102</sup> Ibid, p. 14-16.

<sup>103</sup> Indonesia, Minister of Marine Affairs and Fisheries Regulation Number 56/PERMEN-KP/2014 Moratorium of Fisheries License for Ex Foreign Fishing Vessels in Indonesia Fisheries Management Area.

<sup>104</sup> “Govt Hunts Down Hundreds of Outlawed Vessels”, *the Jakarta Post* (Jakarta), 24 February 2016, Available from <http://www.thejakartapost.com/news/2016/02/24/govt-hunts-down-hundreds-outlawed-vessels.html>.

<sup>105</sup> Indonesia, Minister of Marine Affairs and Fisheries Regulation Number 56/PERMEN-KP/2014.

<sup>106</sup> Indonesia, Minister of Marine Affairs and Fisheries Regulation Number 10/PERMEN-KP/2015.

<sup>107</sup> Indonesia, Minister of Marine Affairs and Fisheries Regulation Number 56/PERMEN-KP/2014.

operation of foreign fishing vessels. The policy to halt fishing license for foreign fishing vessels temporarily was a response to a low non-tax state revenue received amounted to only 8,000 IDR (around 0.61 USD) per gross ton annually. In the same time, it was identified that fishing vessels imported a thousand tons of fish to the US and European countries. Indonesia Government only obtained 300 billion IDR (US\$ 22 million dollars) annually of non-tax revenue from 5,329 big vessels. If it is compared to state's expenditure to subsidize industry of fisheries by means of diesel fuel accounted for 1.2 trillion IDR (US\$ 91 million dollars), huge gap is found. Furthermore, Minister Susi plans to raise levies to big vessels minimum of 200,000 IDR (US\$ 15,3 dollars) per gross ton annually.<sup>108</sup> By temporarily ceasing the license, it is argued that fish stocks can revive and non-tax state revenue can be increased.

As a part of moratorium policy, MMAF then reviewed fisheries license of fishing vessels made by foreign countries. The investigation conducted by a special team called as Task Force 115 found that 1,132 fishing vessels possessed by 187 foreign fishing companies operate in Indonesia. Most of them are from China amounted to 374 followed by Thailand (216), Japan (104), the Philippines (98), and the rests are from the other countries.<sup>109</sup> Those vessels are found violating related laws and regulations resulting to the revocation of 291 fishing licenses, the suspension of 61 fishing permits and the issuance of notices to 95 fishing permits. As an effort to promote transparency and combat IUU Fishing in a larger context, MMAF will submit the data of those vessels to the Global Record of Fishing Vessels initiated by FAO and the International Maritime Organization (IMO).<sup>110</sup>

In auditing ex-foreign fishing vessels, illegal fishing task force investigated “the legal status of companies, the pattern of vessel ownership, their modus operandi (types of violations, including fisheries crime), the roots of the problem and flaws in policy and regulation”. After completing its analysis and evaluation in October 2015, MMAF decided to revoke “15 out of

---

<sup>108</sup> “Minister Pudjiastuti Apologizes for Taking 'Shortcut' on New Regulation”, *Republika Newspaper* (Jakarta), 11 November 2014. Available from <http://nasional.republika.co.id/berita/nasional/politik/14/11/11/nevcrp-kpu-siapkan-simulasi-pilkada-serentak-2015>.

<sup>109</sup> “Stop Lobbying Govt to Ease Fishing Moratorium, Minister Demands”, *The Jakarta Post* (Jakarta), 22 June 2016. Available from <http://www.thejakartapost.com/news/2016/06/22/stop-lobbying-govt-to-ease-fishing-moratorium-minister-demands.html>.

<sup>110</sup> “Susi Calls for Global Fisheries Data-Sharing”, *The Jakarta Post* (Jakarta), 20 November 2015. Available from <http://www.thejakartapost.com/news/2015/11/20/susi-calls-global-fisheries-data-sharing.html>.

187 fishing business license, 245 out of 1,041 fishing licenses, and 31 out of 91 reefer licenses". Some licenses were also suspended and some companies have been sent written notices.<sup>111</sup> During the investigations, task force highlighted that those vessels have breached related regulations such as operational regulations or taxes avoidance.<sup>112</sup> Following the announcement of this revocation, MMAF identified that 414 fishing vessels have disappeared from Indonesia waters. It is suspected that the vessels have returned to their country of origin<sup>113</sup> as they wanted to avoid the liability of the violations conducted. Task Force 115 has submitted request to International Police to track down their positions.<sup>114</sup>

MMAF recognizes that transshipment and some fishing gears contribute to unsustainable fishing practices including IUU fishing. Through the enactment of Ministerial Regulation Number 57/PERMEN-KP/2014, transshipping in Indonesia waters is barred. This regulation amended legal basis for transshipment as stated in Article 37A of Ministerial Regulation Number PER.30/MEN/2012.<sup>115</sup> The policy sparked pros and cons from fisheries industry as related to the costs and freshness of fishes. Indonesia Longline Tuna Association argued that this policy makes the price of tuna hikes as fishing vessels should land their catches to the nearest port leading to higher fuel consumption. In addition, there would be more times taken to the ports influencing the freshness of fishes.<sup>116</sup>

Nevertheless, non-transshipment policy makes national ports more utilized and avoids fishes from Indonesia waters to be transported out to foreign fishing ports illegally. By landing them in Indonesia ports, more supply of fishes securing one part of food security to Indonesia people. With regard to fishing gears, MMAF has adopted Ministerial Regulation

---

<sup>111</sup> United Nations Environment Program (UNEP), "Catching Crime: Fighting illegal fishing has led to a more sustainable industry, increasing food supplies and well-being", May 2016. Available from <http://web.unep.org/ourplanet/may-2016/articles/catching-crime>.

<sup>112</sup> "The End of Foreign Fishing Boats?", *Tempo Magazine* (Jakarta), 10 March 2016. Available from <http://en.tempo.co/read/news/2016/03/10/314752267/The-End-of-Foreign-Fishing-Boats>.

<sup>113</sup> Govt Hunts Down Hundreds of Outlawed Vessels, (see chap. II, footnote 104).

<sup>114</sup> Ibid.

<sup>115</sup> Indonesia, Ministerial Regulation Number 57/PERMEN-KP/2014 concerning Second Amendment to Ministerial Regulation Number PER.30/MEN/2012 on Business of Capture Fisheries in Indonesia Fisheries Management Areas. Available from <http://www.perizinan.kkp.go.id/assets/portal/embed/73/57PERMENKP2014.pdf>

<sup>116</sup> "Reviewing Transshipment Bans", *Maritime News* (Jakarta), 9 March 2015, <https://maritimeneeds.id/reviewing-transshipment-ban/>.

number 2/PERMEN-KP/2015.<sup>117</sup> This regulation prohibits the use of trawls and seine nets since those fishing gears are considered unsustainable and not environmentally friendly to marine ecosystem, particularly for coral reefs and seabed. Previously through this ministerial regulation, government regulates for those type of gears to cease its operation from 9 January 2015.<sup>118</sup> Nevertheless, after further review taking into account from the views of traditional fishermen, this ministerial regulation is suspended until September 2015, giving around 8 months for fishermen to prepare and adapt to new fishing gears.<sup>119</sup>

In fisheries industry, another serious problem found in its strong relations to IUU fishing is fisheries crimes organized transnationally. Indonesia is facing this problem as fishery is very alluring sector in the country. Based on statistical data, Indonesia is the second largest marine producer in capture fisheries in the world amounting to 5,420,247 tonnes, and second to China.<sup>120</sup> Indonesia's contribution to global capture fisheries has increased "from 3 per cent in 1990 to 6 per cent in 2011".<sup>121</sup> Transnational organized crimes such as trafficking in persons and slavery occur in fisheries industry in Indonesia. It becomes international concern as Indonesia is placed in Tier 2 according to Report of the U.S Trafficking in Persons (TIP) 2015. In every province of Indonesia, cases of trafficking are found.<sup>122</sup> The report revealed that forced labour of foreign and Indonesia nationalities working in foreign and Indonesia fishing vessels occurred in Indonesia waters. Mostly they worked in fishing industry of Thailand.<sup>123</sup>

---

<sup>117</sup> Indonesia, Ministerial Regulation number 2/PERMEN-KP/2015 concerning the Prohibition of Trawls and Seine Nets in Indonesia Fisheries Management Areas. Available from <http://www.committedtocrab.org/wp-content/uploads/2015/04/2-permen-kp-2015.pdf>. This regulation commences to entry into force from the date as determined by Ministry of Legal and Human Rights Affairs which is on 9 January 2015.

<sup>118</sup> Ibid.

<sup>119</sup> Minister Susi Gives Transition Period before Trawl, Seine Net Ban", *Tempo Magazine* (Jakarta), 2 February 2015. Available from <http://en.tempco.co/read/news/2015/02/02/056639410/Minister-Susi-Gives-Transition-Period-before-Trawl-Seine-Net-Ban>.

<sup>120</sup> FAO, *the State of World Fisheries and Aquaculture 2014*, (see chap. I, footnote 3), p. 10.

<sup>121</sup> Ilona Stobutzki and others, "Overview of Indonesia's Capture Fisheries, 2013", *Australian Bureau of Agriculture and Resource Economics and Sciences*, (2014) p. 4.

<sup>122</sup> Department of State of the United States of America, "Trafficking in Persons Report 2015", (U.S Department of State Publication: Office of the Under Secretary for Civilian Security, Democracy and Human Rights, 2015), p. 55. According to the report, Tier 2 means countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

<sup>123</sup> Ibid, p. 187.



One prominent case of modern slavery was practiced by PT. Pusaka Benjina Resources in Benjina Island, Maluku, Indonesia. Associated Press reported that more than 300 workers were evacuated to Tual, Maluku after being investigated on 4 April 2015.<sup>124</sup> In 2015, a team investigating this case found that over 1,450 crew members, mostly from Myanmar and Cambodia, did not receive proper salary though they were employed more than agreed normal hours “without clean water and proper food”. They were tortured and thwarted to return home. In responding to this, MMAF adopted Ministerial Regulation Number 35/PERMEN-KP/2015 requiring business people in fisheries industry to respect and implement human rights values.<sup>125</sup> Relevant institutions such as the Investment Coordinating Board (BKPM) and MMAF revoked the company’s business license.<sup>126</sup>

### 1.2.2 Challenges.

The measures championed by the MMAF to combat IUU fishing have resulted positive outcomes. As claimed by United Nations Environment Program, local fishermen and government have been benefitted from above-mentioned policies. They can more easily catch and sell fish in the local markets than previous years. Government also can secure more expenditure on gasoline subsidy. There was an increase of 62.53 percent for fishes landed by local fishing vessels in local fishing ports. Fish consumption also increased from 37.89 kg in 2014 to 41.11 kg in 2015 per individual annually. In addition, according to Central Bureau of Statistics of Indonesia, in 2015 fisheries sector also experienced an upsurge to 8.37 percent of Gross Domestic Products (GDP) compared to 7.35 percent of previous year.<sup>127</sup> Nonetheless, some challenges persist when enforcing those policies.

**Firstly**, National Plan of Action on IUU Fishing is about to expire in 2016. The only definition that specifically refer to activities of IUU Fishing as set out in International Plan of Action on

---

<sup>124</sup> “Over 300 Slaves Rescued from Indonesia Island After AP Investigation into Forced Labour”, *Associated Press* (Jakarta), 4 April 2015. Available from <http://www.ap.org/explore/seafood-from-slaves/over-300-slaves-rescued-from-Indonesia-island-after-ap-investigation.html>.

<sup>125</sup> Indonesia, Ministerial Regulation Number 35/PERMEN-KP/2015 concerning System and Certification of Human Rights on Fisheries Business. Available from [http://infohukum.kkp.go.id/index.php/hukum/?produk\\_id=7&tahun\\_start=&tahun\\_end=&keyword=hak+asasi&type\\_id=1&submit=CARI](http://infohukum.kkp.go.id/index.php/hukum/?produk_id=7&tahun_start=&tahun_end=&keyword=hak+asasi&type_id=1&submit=CARI).

<sup>126</sup> “BKPM to Revoke License of Benjina Firm”, *The Jakarta Post* (Jakarta), 2 May 2015. Available from <http://www.thejakartapost.com/news/2015/05/02/bkpm-revoke-license-benjina-firm.html>.

<sup>127</sup> UNEP, “Catching Crime: Fighting illegal fishing”, (see chap. II, footnote 111).

IUU Fishing within national document can be found in NPOA-IUU Fishing.<sup>128</sup> Most importantly, action plans contained in existing NPOA-IUU Fishing most likely are no longer meet up with dynamics and actual challenges that Indonesia and the world are facing currently.

**Secondly**, prominent challenge also comes from fisheries stakeholders such as fisheries industry inside and outside the country as they are affected by trawl and purse seine prohibition. A large wave of demonstration was held by fishermen in several regions to stage protests to the prohibition of unsustainable fishing gears such as trawl and seine nets as stipulated in Ministerial Regulation number 2/PERMEN-KP/2015. Traditional fishermen argued their livelihoods were effected due to the ban if no alternative solution was provided as 80 percent of them still were accustomed to traditionally use that type of fishing gears. Fishermen also opposed to regulation adopted by MMAF to limit size of lobster and crab they could catch and sell. This limitation prompted controversy as fishermen in some areas exported them out to overseas.<sup>129</sup> According to Ministerial Regulation Number 1/2015, it is not allowed for everyone to catch lobster and crab under certain dimensions and when having eggs.<sup>130</sup>

In virtue of destructive fishing nets, Indonesia Government has banned those devices since 1980 through Presidential Decree Number 39 Year 1980 on Elimination of Trawl Net.<sup>131</sup> However, law enforcement of this regulation is not as effective as it should be because of several reasons such as the lack of patrol vessel and legal apparatus to oversee its implementation.<sup>132</sup> This circumstance made fishermen violate the existing regulation for years as though that was legal.

---

<sup>128</sup> MMAF, “National Plan of Action on IUU Fishing”, (see chap. II, footnote 99).

<sup>129</sup> “Indonesia Fisherman Stage Protest against New Regulations”, *Jakarta Globe* (Jakarta). Available from <http://jakartaglobe.beritasatu.com/news/indonesian-fishermen-stage-protests-new-regulations/>.

<sup>130</sup> Indonesia, Ministerial Regulation Number 1/PERMEN-KP/2015 concerning Catching Lobster and Crabs. Available from <http://www.committedtocrab.org/wp-content/uploads/2015/04/1-1-permen-kp-2015.pdf>.

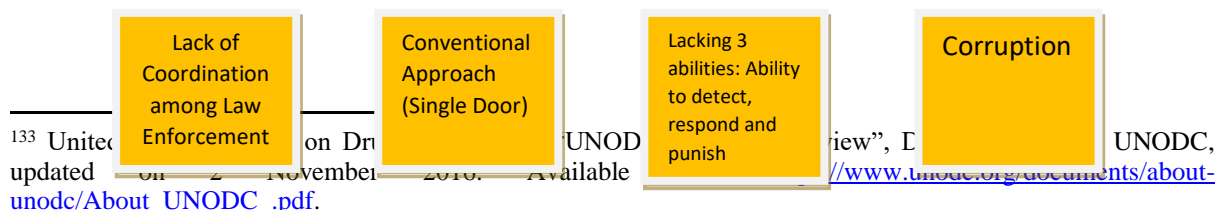
<sup>131</sup> Indonesia, Presidential Decree Number 39 Year 1980 concerning Trawl Net Elimination, Article 1. Trawl was eliminated gradually, until 1982 when Presidential Instruction No.11 Year 1982, recognized January 1st 1983 as the date for no trawl in Indonesia waters.

<sup>132</sup> Melda Kamil Ariadno, “Sustainable Fisheries in Southeast Asia”, *Indonesia Law Review*, vol. (2011)3, p. 315.

**Thirdly**, moratorium policy may create the lack of fish supply in the market and unemployment for people working in fish processing factory. In sustaining fish stocks, some areas particularly in Management Protected Areas (MPAs) are commonly closed or limited for fishing activity in some seasons. This method is taken to give chance for the revival of fish stock. In determining MPA along with rules, authorities should gather relevant stakeholders particularly small scale fishermen as they depend heavily their lives from fishing. Their concerns should be listened in achieving the best decision. Moratorium policy imposed to ex foreign fishing vessels above 30 gross tones offered some advantages and disadvantages. The former comes from fish stock availability and non-tax revenue while the latter are related to unemployment in fisheries factories and fish availability in the market. Benefits taken from this policy has been elaborated in the previous section.

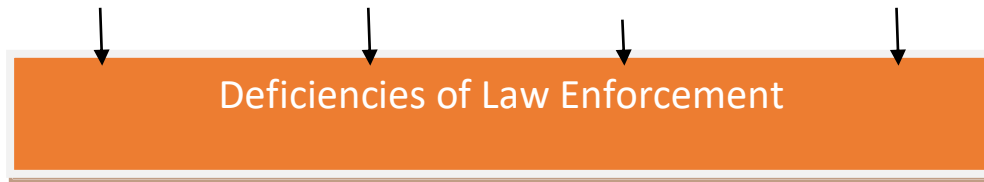
**Fourthly**, from institutional aspect, there is a clear separation for international organizations in addressing IUU fishing and fisheries crimes. IUU fishing is developed under the regime of International Plan of Action on IUU fishing (IPOA-IUU), which is administered by FAO while fisheries crimes fall under the UN Office on Drugs and Crime (UNODC) as it is related to mainly the issues of crime. There are three major aspects under auspices of UNODC, namely: crime, drug and terrorism. For crime, matters covered are corruption, human trafficking, justice and person reform, money-laundering and organized crime.<sup>133</sup>

**Fifthly**, Deputy Head of Task Force 115 conceived that law enforcement agencies of Indonesia responsible to fight against IUU fishing experience inadequacies in light of coordination as well as capacity to spot, react and punish. The other shortcoming comes from corruption in the government institutions. The challenges identified concerning law enforcement in the marine and fisheries in Indonesia are as depicted in the following figure 2:<sup>134</sup>



<sup>133</sup> United Nations Office on Drugs and Crime, "UNODC Strategy on Corruption", E/CN.4/Sub.2/2010/11, UNODC, updated on 2 November 2010. Available at [http://www.unodc.org/documents/about-unodc/About\\_UNODC.pdf](http://www.unodc.org/documents/about-unodc/About_UNODC.pdf).

<sup>134</sup> Yunus Husein, "Indonesia's Approach in Tackling Fisheries Crime: Strategy on Combatting IUU Fishing and Post Moratorium Policies Plan" (Paper presented at the Symposium on FishCRIME, in Cape Town, South Africa, 12-13 October 2015).



**Figure 2: Challenges in Law Enforcement of Indonesia in Combatting IUU Fishing**

Coordination is sometimes easy to mention but difficult to undergo. This occurs also in government institutions. The success of goals in one organization can be determined by having a good coordination amongst stakeholders. In the case of fisheries, law enforcement holds an important factor in combatting IUU fishing, fisheries crimes and fisheries-related crimes. In above chart, insufficient coordinated measures amongst law enforcement agencies are identified as one of the factors affecting deficiencies of law enforcement.

## **2. Existing Policy and Proposed Measures.**

The prevailing policies mainly involve different institutions since good cooperation between MMAF and the other institutions determines significantly the overall success of policy's implementation. In general, Indonesia's measure to fight against those practices is divided into two phases. First phase is prior to the establishment of special teams while second phase is post-foundation of those task forces. It can be asserted from both periods that the former is less foreign fishing vessels sunk compared to the latter.

### **2.1 Policy Issues**

#### **2.1.1 Inter-Agency Collaboration**

Indonesia's abundant marine resources allure the other countries to catch fishes in Indonesia's waters under its national jurisdiction. Fishermen using small boats and big fishing fleets explore fisheries resources illegally in EEZ, territorial waters and even in internal waters of the country. They come and catch fishes illegally in the forms of IUU fishing. As revealed by Susi Pudiastuti, "the finding discovered that at a certain time on a certain day, over 70 vessels of 50 to 70 gross tons entered Indonesian waters".<sup>135</sup>

---

<sup>135</sup> Sunan J. Rustam, "Legal Review of "Sink the Vessel" Policy", *The Jakarta Post*, 6 December 2014. Available from <http://www.thejakartapost.com/news/2014/12/06/a-legal-review-sink-vessel-policy.html#sthash.zY2qAWj3.dpuf>.

When investigating IUU fishing, Indonesia acknowledged that the activity caused fisheries crimes and other fisheries-related crimes. Several fishing vessels engaged in transnational organized criminals also involved in illegal activities such as human trafficking, tax fraud and other related crimes.<sup>136</sup> In overcoming this issue, Indonesia government has committed strongly to fight against IUU fishing and fisheries crimes by using integrated approach involving relevant institutions such as Navy, Maritime Police, Maritime Security Agency and the other relevant institutions.

Before Susi assumed the post, previous ministers of marine affairs and fisheries had sunk fishing boats. According to Director General of Marine Resources Surveillance of MMAF, Indonesia authorities had seized 16 (sixteen) ships committing to illegal fishing in Indonesian waters from January to April 2014 and confiscated 130 Thailand fishing vessels between 2007 and April 2014.<sup>137</sup> Between 2007 and 2012, MMAF had sunk 33 of 38 illegal foreign vessels. Most of them were Viet Nam fishing vessels caught when fishing in Natuna Island waters.<sup>138</sup>

Although MMAF has undergone the stringent measure of sinking vessels conducting illegal fishing, it did not prevent illegal fishers to breach sovereignty and sovereign rights of Indonesia completely. They still continued to poach in Indonesia waters. During the regime of former President Susilo Bambang Yudhoyono, the government did not expose this policy widely. One possible reason was foreign policy of Indonesia to have “a million friends and zero enemies”.<sup>139</sup> Literally, Indonesia’s concept of international policy is to make as many as friends and as little as enemies. Hence, the exposure of illegal fishing vessels sinking may harm bilateral, regional and multilateral relations between Indonesia and other countries. In addition, as member of ASEAN (Association of Southeast Asian Nations), Indonesia also preferred to foster good relations with neighboring states within the principle of ASEAN

---

<sup>136</sup> Protecting our Waters from Fisheries Crime (see chap. I, footnote 18).

<sup>137</sup> New Indonesian Maritime Affairs Minister Declares War Against Illegal Fishing (see chap. I, footnote 13).

<sup>138</sup> “RI to Sink 3 Foreign Ships for Illegal Fishing, *The Jakarta Post* (Jakarta), 5 December 2015. Available from <http://www.thejakartapost.com/news/2014/12/05/ri-sink-3-foreign-ships-illegal-fishing.html>.

<sup>139</sup> Evi Fitriani, “Yudhoyono’s Foreign Policy: Is Indonesia a Rising Power?” in *The Yudhoyono Presidency: Indonesia’s Decade of Stability and Stagnation*, in Edward Aspinal, Marcus Mietzner and Dirk Tomsa eds, (Institute of Southeast Asian Studies, 2015) p. 77.

Way as values shared by ASEAN member countries to emphasize on the principles of consultation and dialogue as well as non-interference to domestic issues.<sup>140</sup>

Different approach is being practiced by Minister Susi. Seemingly, she prefers to expose the sinking through media and puts aside traditional ASEAN Way in combatting IUU Fishing. She also inclines to sink those vessels during the commemoration of national public holidays such as Indonesia Independence Day as a message for the other countries to respect Indonesia's territory.<sup>141</sup> After Susi took in charge as Minister of Marine Affairs and Fisheries, the vessels sunk increases significantly. According to the Jakarta Post, there were 18 illegal fishing vessels during the period of October 2014 to March 2015<sup>142</sup> and 38 illegal foreign fishing vessels in 18 August 2015 were sunk by Indonesia's authorities.<sup>143</sup>

During 2014 until April 2016, a total number of 176 illegal fishing vessels from other countries have been sunk by Indonesia's authorities including "FV *VIKING*, a notorious stateless vessel sought worldwide by INTERPOL and 13 countries".<sup>144</sup> The biggest amount is fishing vessels from Viet Nam accounted for 63, followed by the Philippines (43), Thailand (21), Papua New Guinea (2), one from Belize and one is Chinese's fishing vessel. Most of those vessels were detained in the Natuna waters amounted to 57 fishing vessels and the rests were arrested in Kalimantan, Sulawesi and Papua. When arresting those fishing vessels, Susi recognized that the most challenging task was when dealing with China's fishing vessels as they were escorted by their coastguards.<sup>145</sup> The rationale for most foreign fishing vessels arrested in Natuna is EEZ of Natuna Island waters are adjacent to South China Sea and Indonesia has maritime boundaries with neighbor countries. This issue becomes

---

<sup>140</sup> Hiro Katsumata, "Reconstruction of Diplomatic Norms in Southeast Asia: the Case for Strict Adherence to the "ASEAN Way", *Contemporary Southeast Asia*, vol. 25 (2003) p. 104.

<sup>141</sup> "Indonesia Sinks 60 Fishing Boats on Independence Day", *the Wall Street Journal* (New York), 17 August 2016. Available from <http://www.wsj.com/articles/indonesia-sinks-60-fishing-boats-on-independence-day-1471428634>.

<sup>142</sup> "RI to Sink Boats from China, Thailand, Malaysia on Wednesday", *The Jakarta Post* (Jakarta), 19 May 2015 <http://www.thejakartapost.com/news/2015/05/19/ri-sink-boats-china-thailand-malaysia-wednesday.html>.

<sup>143</sup> Lagi, 38 Kapal Illegal Fishing Ditenggelamkan (Again, 13 Illegal Fishing Vessels were Sunk)", *Tempo* (Jakarta). Available from <http://m.dev.tempo.co/read/news/2015/08/18/090693058/Lagi-38-Kapal-Illegal-Fishing-Ditenggelamkan>.

<sup>144</sup> UNEP, "Catching Crime: Fighting illegal fishing", (see chap. II, footnote 111).

<sup>145</sup> "Zero Tolerance for Poachers", *The Jakarta Post* (Jakarta), 22 June 2016. Available from <http://www.thejakartapost.com/news/2016/06/22/zero-tolerance-for-poachers.html>.

more complicated as EEZ of Natuna Island is overlapped with disputed area of Nine Dash Line claimed by China.

Minister Susi also initiated to have an established task force under ministerial decree to eliminate IUU fishing. The duties of Task Force are:<sup>146</sup>

1. To conduct analysis and evaluation of 1.132 ex-foreign vessels (legal due diligence) and develop legal consequence analysis (per company and vessel);
2. To develop, monitor and/or implement recommendations resulted from analysis and evaluation;
3. To conduct fisheries license governance reform (national and regional level);
4. To monitor enforcement practices on IUU Fishing and provide technical assistance for enforcement officers on cases basis;
5. To develop integrated and comprehensive enforcement guidelines on IUU Fishing;
6. To strengthen coordination among enforcement agencies by developing online case tracking system on IUU fishing.

Another task force was formed under presidential regulation, known as Task Force 115. The 115 figure comes from number of presidential regulation as legal basis of its foundation. This team has duties as follows:<sup>147</sup>

1. To strengthen the enforcement capacity and effectiveness to combat IUU fishing by establishing joint enforcement task force which includes MMAF, Navy, Police, Coast Guards, and Public Prosecutors;
2. To utilize the existing forces including warship, airborne, and other appropriate technology for surveillance and enforcement purposes;
3. To patrol regularly (including airborne surveillance) conducted by joint task force to detect IUU fishing activities.

Principally, task force under ministerial decree focuses its works on combatting IUU fishing within the ambit of the ministry while Task Force 115 pays its attention on a larger scope

---

<sup>146</sup> Fish Crime, “Yunus Husein: Indonesia’s Approach to Tackling Fisheries Crimes”, 12 August 2015. Available from <http://www.fishcrime.info/assets/Uploads/Yunus-Husein-Indonesian-Approach-To-Tackling-Fisheries-Crime.pdf>.

<sup>147</sup> Fisheries Transparency, “Presentation by Head of Task Force 115: Indonesia’s Approach in Tackling IUU Fishing”, 9 November 2015. Available from [http://fisheriestransparency.org/wp-content/uploads/2015/11/Presentation\\_Combating\\_IUUF\\_Efforts\\_in\\_Indonesia\\_20151109.pdf](http://fisheriestransparency.org/wp-content/uploads/2015/11/Presentation_Combating_IUUF_Efforts_in_Indonesia_20151109.pdf).

involving different institutions and under direct supervision of the President of the Republic of Indonesia.

As stated in the title, the task force established by presidential regulation focuses on combatting illegal fishing. This means that this team does not have authority to fight against unreported and unregulated fishing. Nevertheless, Article 2 states that task force also has duty to address unreported fishing.<sup>148</sup> Simply, inconsistency is found in this presidential regulation. If this illegal fishing term is meant to be part of unreported fishing, it is arguably not in a correct term as the concepts of illegal and unreported are distinguished under IPOA-IUU Fishing,<sup>149</sup> though those terms are overlapped in their application to some extent. Furthermore, this task force also does not have specific task in addressing and combatting fisheries related crimes as they focus only on illegal fishing. Therefore, it is necessary for this presidential regulation to be amended by putting transnational organized fisheries crimes and unregulated fishing as part of this task force's duties.

### **2.1.2 Inter-Country Cooperation**

Sinking illegal foreign fishing vessels is deemed as carrying a deterrent effect. This is aimed to frighten foreign poachers and prevent them further to catch fish illegally in Indonesia waters. Approaches that Minister Susi has taken to some extent make regional relations inconvenient as most of fishing vessels sunk are from countries around Indonesia. Nevertheless, it is important to garner support from regional and international communities in addressing the matter as the problem is transboundary in character and it cannot be solved by Indonesia alone. Bilateral, regional and international initiatives have been taken by Indonesia in combatting IUU fishing. Meanwhile, transnational organized fisheries crimes were a relatively new issue endorsed by the government in bilateral, regional and international negotiations although these crimes have been for a long time in its existence.

MMAF has collaboration with the other countries concerning issues of marine affairs and aquaculture. Bilaterally, Indonesia has signed binding and non-binding legal instruments documents with numerous states on areas of common concerns. Probably the most

---

<sup>148</sup> Indonesia, Presidential Regulation Number 115/2015, Article 2.

<sup>149</sup> FAO, "International Plan of Action on Illegal, Unreported and Unregulated Fishing (IPOA-IUU Fishing)", (2001) (Food and Agriculture Organization: Rome) p. 2.



relevant and current joint initiative inked between Indonesia and its counterpart in addressing IUU fishing and fisheries crimes is the cooperation between the Government of the Republic of Indonesia and the Government of the Kingdom of Norway. On 24 November 2015, Indonesia and Norway has committed to combat IUU fishing, fisheries crime and fisheries-related crimes as well as to promote sustainable fisheries governance through the signing of a joint statement between the Minister of Marine Affairs and Fisheries of Indonesia and the Minister of Trade, Industry and Fisheries of the Kingdom of Norway.<sup>150</sup>

Both ministers agreed to cooperate and coordinate in the levels of operational and policy to prevent, deter and eliminate IUU fishing, fisheries crimes and fisheries related crimes pursuant to relevant “international best practice in line with UNCLOS and the principle of due legal process”. They also intended to promote measures for responsible fisheries through “information sharing, capacity building activities, and sharing best practices on combating IUU fishing, fisheries crimes and fisheries related crimes with particular focus on multidisciplinary and inter-agency cooperation”. Lastly, they also agreed to explore joint efforts in international institutions to fight against IUU fishing and fisheries crimes as well as “to promote sustainable fisheries governance”.<sup>151</sup>

Minister Susi has signed various memoranda of understanding including with Timor Leste (East Timor). Having cooperation with this country for Indonesia is strategic as both countries have maritime boundaries. Indonesia’s Minister of Marine Affairs and Fisheries and Timor Leste’s Minister of Fisheries and Agriculture signed Memorandum of Understanding to accelerate coordination on the activities of the elimination of fish poaching, fisheries conservation management and technology information exchange.<sup>152</sup>

Russia is also deemed as a strategic partner in diminishing IUU Fishing. Minister Susi has visited Russia and paid a visit to Deputy Prime Minister Arkady Dvorkovich. During the

---

<sup>150</sup> International Labour Organization, “Joint Statement between Indonesia and Norway to Combat IUU Fishing, Fisheries Crimes and Other Fisheries related Crimes”, 25 December 2015. Available from [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/statement/wcms\\_429592.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/statement/wcms_429592.pdf).

<sup>151</sup> Ibid.

<sup>152</sup> “Menteri Susi Fokus Tingkatkan Kerja Sama Internasional (Minister Susi Focuses on Promoting International Cooperation)”, *Republika Newspaper* (Jakarta), 30 August 2016. Available from <http://www.republika.co.id/berita/ekonomi/makro/15/08/29/nttugf335-menteri-susi-fokus-tingkatkan-kerja-sama-internasional>.

meeting, they discussed issue of IUU fishing. Susi revealed Indonesia's plan to establish 15 incorporated fishery stations in some different areas across the country and to operate sea radars made by Russia. The radars are aimed to support small patrol ships in decreasing fish poaching cases.<sup>153</sup>

In regional fora, Indonesia also actively seeks supports from regional organizations, ultimately ASEAN member states and its dialogue partners.<sup>154</sup> Indonesia altogether with the United States and Timor Leste organized and chaired the ASEAN Regional Forum (ARF)<sup>155</sup> Workshop on IUU Fishing on 19-24 April 2016 in Bali, Indonesia. This event was a continuation of previous ARF Workshop on Improving Fisheries Management conducted in Honolulu, Hawaii, US on 22-23 march 2016 headed by Indonesia and the U.S. The objectives of the said workshops were to establish foundation for promoting dialogue and collaboration in eliminating fish thieving in the region and endorsing Indonesia's measure to "create a regional instrument" on the prevention, deterrence and elimination of IUU fishing.<sup>156</sup> The participants of Bali workshop highlighted measures to prevent, deter and eliminate IUU fishing and its connection to the crimes transnationally organized. Mainly, it was expected that the participants of the workshop could pay more attention to the issue concerned and eventually take real efforts in overcoming the problem.<sup>157</sup>

Regional initiative on IUU fishing is continued to be promoted further by the Regional Conference on the Establishment of a Regional Convention against IUUF and its Related

---

<sup>153</sup> Ibid.

<sup>154</sup> The Association of Southeast Asian Nations, or ASEAN, was established on 8 August 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration) by the Founding Fathers of ASEAN, namely Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam then joined on 7 January 1984, Viet Nam on 28 July 1995, Lao PDR and Myanmar on 23 July 1997, and Cambodia on 30 April 1999, making up what is today the ten Member States of ASEAN.

<sup>155</sup> ASEAN Regional Forum (ARF) is a forum established by ASEAN in 1994 for open dialogue and consultation on regional political and security issues, to discuss and reconcile the differing views between ARF participants in order to reduce risk to security. ASEAN undertakes the obligation to be the primary driving force. The ARF recognizes that the concept of comprehensive security includes not only military aspects but also political, economic, social and other issues. It comprises 27 members: the 10 ASEAN member states (Brunei, Cambodia, Indonesia, Laos, Malaysia, Burma, Philippines, Singapore, Thailand and Vietnam), the 10 ASEAN dialogue partners (Australia, Canada, China, the EU, India, Japan, New Zealand, ROK, Russia and the United States), one ASEAN observer (PNG) as well as the DPRK, Mongolia, Pakistan, Timor-Leste, Bangladesh and Sri Lanka.

<sup>156</sup> Ministry of Foreign Affairs of the Republic of Indonesia, "Indonesia Chairs ARF Workshop on Illegal, Unreported and Unregulated (IUU) fishing", 22 April 2016. Available from <http://www.kemlu.go.id/en/berita/Pages/workshop-iuu-fishing.aspx>.

<sup>157</sup> Ibid.

Crimes in Bali on 19 May 2016 hosted by Indonesia Government.<sup>158</sup> During the discussions, participants shared similar views that IUU fishing *per se* was not a TOC. However, the linkage between IUU fishing and crimes or TOC was recognized. It was highlighted that there were criminal activities leading and connecting to IUU fishing. This connection has created persistent challenges in combating IUU fishing that needs to be addressed comprehensively.<sup>159</sup>

It was also viewed that the existing definition of IUU fishing should not be changed. Such new terminology as “fisheries crimes” or “fisheries-related crimes” should be discussed and studied further, taking into account the existing international laws. The participants emphasized that this initiative should not overlap with existing regional instruments and mechanisms. It should complement and strengthen such existing regional and international instruments and mechanisms. In this regard, a gap analysis was advised. This initiative should take into account information sharing, capacity building, law enforcement cooperation and also use of internet-based technology for monitoring, controlling and surveillance. A further study on matters raised in this Conference was discussed at the 2nd Conference on October 2016 in Yogyakarta, Indonesia.<sup>160</sup>

In virtue of law enforcement, Indonesia and International Police (INTERPOL) have cooperation to combat illegal fishing and fisheries crimes through Project Scale initiated by INTERPOL. This project was launched on the occasion of the 1<sup>st</sup> INTERPOL Conference on International Fisheries Enforcement held on 26 February 2013 at the General Secretariat of INTERPOL in Lyon, France. There are three parties supporting this project, namely; the Government of Norway, the United States Department of State and the Pew Charitable Trusts. This Project aims to, among others, increase awareness and make assessment on affective needs for vulnerable countries concerning fisheries crimes as well as “facilitate

---

<sup>158</sup> The Conference was attended by representatives of Australia, China, Laos, Malaysia, New Zealand, Papua New Guinea, the Philippines, Singapore, Thailand, Timor-Leste, and Vietnam. The Conference was also attended by market states and organizations such as the Republic of Korea, the U.S, and the European Union, FAO, UNODC, and the Sub Regional Fisheries Commission (SFRC) of West Africa.

<sup>159</sup> Chair’s Conclusion of the Regional Conference on the Establishment of a Regional Convention against IUUF and Its Related Crimes, on 19 May 2016 in Bali, Indonesia.

<sup>160</sup> Ibid.

regional and international operations to suppress crime, disrupt trafficking routes and ensure the enforcement of national legislation”.<sup>161</sup>

The first meeting of the Fisheries Crime Working Group was founded after the conference. This working group has objective to enhance the building of capacity, the exchange of information and the support of operational to combat fisheries crimes.<sup>162</sup> Through this project, as of May 2016 INTERPOL has issued 17 Purple Notices and 17 Blue Notices as requested by several countries including Indonesia.<sup>163</sup>

In recent case, Indonesia has sent enquiry to INTERPOL in tracing *Hai Fa* vessel for catching and exporting hammerhead sharks, deactivating AIS (Automatic Identification System) and VMS (Vessel Monitoring System) as well as sailing back to China without seaworthiness and port clearance. District Court of Ambon Region and Appellate Court of Maluku Province ruled Captain of *Hai Fa* guilty and imposed fine amounted to U\$ 15,000. In responding this, INTERPOL has issued purple notice<sup>164</sup> in 9 September 2015. As a result, from the information received, this vessel is located in near Hong Kong and INTERPOL has sent letter to NCB (National Central Bureau) Hong Kong to supervise and provide information concerning the activities of *Hai Fa*.<sup>165</sup> Indonesia also took a rapid and robust response for vessel wanted by INTERPOL.

## 2.2 Proposed Measures

This part will focus on the proposed measures on how to address this transnational problem. First of all, it is needed international cooperation from like-minded states in the

---

<sup>161</sup> INTERPOL, “Project Scale”. Updated on 15 August 2016. Available from <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Scale>.

<sup>162</sup> Gregory Rose, “Combating Transnational Environmental Crime: Future Direction”, in *Following the Proceeds of Environmental Crime: Fish, Forests and Filthy Lucre*, Gregory Rose ed. (London and New York: Routledge, 2014) p. 234.

<sup>163</sup> INTERPOL, “Targeting Organized Crime Networks behind Illegal Fishing Focus of INTERPOL Meeting”. Updated on 20 May 2016. Available from <http://www.interpol.int/News-and-media/News/2016/N2016-065>.

<sup>164</sup> According to INTERPOL, Purple Notice means to seek or provide information on modus operandi, objects, devices and concealment methods used by criminals, Red Notice means to seek the location and arrest of wanted persons with a view to extradition or similar lawful action.

<sup>165</sup> Mas Achmad Santosa, “Strategy on the Prevention and Eradication of IUU Fishing and Post-Moratorium Policy”, 6 November 2015. Available from [http://fisheriestransparency.org/wp-content/uploads/2015/11/Presentation\\_Combating\\_IUUF\\_Efforts\\_in\\_Indonesia\\_20151109.pdf](http://fisheriestransparency.org/wp-content/uploads/2015/11/Presentation_Combating_IUUF_Efforts_in_Indonesia_20151109.pdf).

form of bilateral and regional collaborations. Secondly, domestic efforts necessary in addressing the gaps identified in internal system.

### **2.2.1 Stronger Bilateral and Regional Cooperation**

The South Africa and Norwegian Governments altogether have very much concern in combatting IUU fishing and fisheries crimes. Both countries and the other organizations such as Stop Illegal Fishing and PescaDOLUS agreed to have a joint initiative by convening the First International Symposium on FishCrime held in 12 and 13 October 2015 in Cape Town, South Africa. This event was co-funded by Department of Agriculture, Forestry and Fisheries of South Africa and the Ministry of Trade, Industry and Fisheries of Norway. There were 198 participants representing 31 countries attending this symposium.<sup>166</sup>

The initiative to establish FishFORCE Academy in Nelson Mandela Metropolitan University taken by South Africa and Norway should be discerned as advanced measure not only for South Africa, Norway and the Africa region but also international community in a larger ambit. This program can be a pilot project for law enforcement in clamping down fisheries crimes and fisheries-related crimes in Africa continent in the years to come. As concern from fishery industry grows in which more than 50% fish stock depleted due to overfishing along the waters from Nigeria to Senegal as well as highly affected local economy in country such as Senegal amounted to \$300 million dollars annually,<sup>167</sup> this program can offer an alternative for sharing and building capacity on how to address the said crimes in more effective means and ways. This is timely as one prominent inadequacy is the lack of law enforcement's devices such as patrol boats as happened in Sierra Leone.<sup>168</sup> With this drawback, FishFORCE can be used to enhance the quality of enforcement through what is called as intelligence-led investigations.

---

<sup>166</sup> Stop Illegal Fishing and PescaDOLUS, "Record of the First International Symposium on Fish Crime", (Oslo: the Norwegian Ministry of Trade, Industry and Fishing 2016) paras. 4-5.

<sup>167</sup> Anthony Kleven, "China and Africa's Illegal Fishing Problem", 19 August 2016. Available from <http://thediplomat.com/2016/08/china-and-africas-illegal-fishing-problem/>.

<sup>168</sup> Ibid.

Indian Ocean Rim Association (IORA)<sup>169</sup> can be a proper forum to disseminate and enlarge the works of FishFORCE through the mechanisms of bilateral and regional cooperation. It is a perfect moment for Indonesia and South Africa to cooperate in this forum as both countries are chair and vice chair of this forum until 2017. IORA asserts fisheries management as one of priority areas and member countries of IORA are eager in developing “management and conservation” of fish resources’ in the region. This association also has a deep concern regarding overfishing and climate change affecting fish stock and food security.

In IORA, Fisheries Support Unit (FSU)<sup>170</sup> can be used to discuss on how to strengthen the cooperation between FishFORCE and IORA coastal states and measures that can be rendered to them. Collaboration between both sides can also be generated through maritime safety and security area as this issue has become a key priority in IORA. In this extent, FishFORCE and IORA have common grounds in addressing traditional and non-traditional security issues in the ocean such as illegal fishing, human trafficking, people smuggling, piracy and weapons smuggling. In the near future, the possibility to conduct joint patrol amongst IORA members should be implemented and FishFORCE can render its support in this sense.

Indonesia is a potential country for FishFORCE and South Africa to extend cooperation, and *vice versa*. Indonesia’s strong commitment to clamp down would be a good opportunity for FishFORCE and South Africa to have also a mutual collaboration. The cooperation between both parties should be formulated through a legally binding document such as Memorandum of Understanding (MoU) or other mutually agreed agreement.

In its areas of cooperation, the parties should agree, among others, in preventing, deterring and eliminating IUU fishing, transnational organized crimes and fisheries-associated crimes. Another areas such as education and training within the scope of marine and fisheries are

---

<sup>169</sup> Indian Ocean Rim Association (IORA), “Membership”. Updated 13 November 2016. Available from <http://www.iora.net/about-us/membership.aspx>. IORA is an international organization with 21 member states: Australia, Bangladesh, Comoros, India, Indonesia, Iran, Kenya, Madagascar, Malaysia, Mauritius, Mozambique, Oman, Seychelles, Singapore, Somalia, South Africa, Tanzania, Thailand, UEA and Yemen.

<sup>170</sup> IORA, “Fisheries Management”. Updated on 13 September 2016. Available from <http://www.iora.net/about-us/priority-areas/fisheries-management.aspx>.

worth to be included. In order to ensure its effective implementation, a regular meeting under a joint committee should be established. Members of the commission can be government officials and academics. This combination is convinced to produce better decisions or policies as their basis is relied upon proper scientific evidence.

A strong bilateral relation between two countries has been laid through the signing of Joint Declaration on a Strategic Partnership for a Peaceful and Prosperous Future between the Government of the Republic of Indonesia and the Government of the Republic of South Africa by the two presidents.<sup>171</sup> This document is an affirmation from both countries to have a higher level cooperation after the two countries signed MoU between the Government of the Republic of South Africa and the Government of the Republic of Indonesia on the Establishment of a Joint Commission for Bilateral Cooperation on 23 March 2004 in Durban.<sup>172</sup> On the sidelines of the Asian-African Ministerial Meeting as part of the 60<sup>th</sup> Anniversary of the Asian-African Conference, both parties agreed to renew this MoU on 20 April 2015 in Jakarta. The Minister of Foreign Affairs of Indonesia and the Minister of International Relations and Cooperation of South Africa have come into an agreement to explore cooperation in “maritime sector and the blue economy”.<sup>173</sup>

From above-mentioned commitment of those two ministers, the cooperation between the MMAF of Indonesia and the Department of Agriculture, Forestry and Fisheries of South Africa is widely open. If the parties agree to conclude such a memorandum of understanding or agreement on marine and fisheries, the work of joint committee under the agreement should be linked to joint commission under the said memorandum of understanding. The cooperation between Indonesia and South Africa may include other parties such as the Government of Norway and UNODC.

---

<sup>171</sup> The joint declaration was concluded on 17 March 2008 in Tshwane, South Africa. Through this strategic partnership, both presidents pledged to work closely to strengthen bilateral cooperation in all fields. They will also intensify cooperation in various regional, inter-regional, and international forums with the principles stipulated in the UN Charter and other universally recognized norms of international law.

<sup>172</sup> In Article 1 of this memorandum of understanding, the establishment of joint commission is to facilitate consultation and cooperation between two countries of the Parties, especially in the economic, trade, cultural and technical fields. This MoU is guided by terms of reference as integral part of this MoU.

<sup>173</sup> “RI, South Africa Establish Bilateral Joint Commission”, *The Jakarta Post* (Jakarta), 20 April 2016. Available from <http://www.thejakartapost.com/news/2015/04/20/ri-south-africa-establish-bilateral-joint-commission.html>.

More technically, within the framework of policy, both states may exchange views and share best practices on how to develop and formulate sound policies in determining the effective ways to eliminate IUU fishing, fisheries crimes and fisheries-related crimes. In managing living marine resources, Indonesia has Law on Fisheries while South Africa has MLRA. Issue such as stringent measures through higher administrative penalty and punishment can be one good example to discuss. FishFORCE can provide higher education in the university and training since the academy is under auspices of Nelson Mandela Metropolitan University (NMMU),<sup>174</sup> as part of capacity building measure for the personnel of MMAF concerning law enforcement and regulations. In addition, joint program can also be developed between NMMU and a university in Indonesia to bridge research activities for academics of both institutions.

### **2.2.2 Policy Framework Measures**

Policy framework holds important role in fostering living marine resources at a sustainable level. In attaining this goal, problems of IUU fishing, transnational organized fisheries crimes and fisheries-associated crimes should be addressed in comprehensive and integrated measures. Through the vision of Indonesia as Global Maritime Fulcrum determined by the President of Indonesia's, fisheries resources turn into a very important subject of policy in the level of national. The determination of the Minister of Marine Affairs and Fisheries of Indonesia to clamp down fish plundering by sinking illegal foreign fishing vessels has been an interesting subject of discussion particularly when posing the fact that fisheries resources have been depleted globally as well as the other severe impacts on economy, social and environment <sup>175</sup>

**Firstly**, in NPOA-IUU fishing of 2017-2021, vision of current Indonesia's President for Indonesia as Global Maritime Fulcrum should be envisioned in the document. This vision is basic footing to project measures taken in the future to combat IUU fishing. It is important also to include fisheries crimes organized transnationally in this NPOA-IUU Fishing. Not only

---

<sup>174</sup> PescaDOLUS, "Fisheries Law Enforcement Academy Established at NMMU". Available from <http://www.pescadolus.org/fisheries-law-enforcement-academy-established-nmmu/>.

<sup>175</sup> Palma, Tsamenyi and Edeson, *Promoting Sustainable Fisheries*, (see chap. I, footnote 4), p. 9.



has this issue been endorsed by Minister Susi in many occasions but also in order to respond problems Indonesia poses currently. All policies taken by Minister Susi in implementing sustainable fisheries practices should be elaborated in more detail actions along with timeframe to achieve certain target.

This document supposedly becomes main guidelines and domestic commitment in combatting IUU fishing and fisheries crimes. It is important to include also cases related to fisheries crimes such as and *Hai Fa*<sup>176</sup> Benjina cases since those are important as lessons learned for policy makers when dealing with same cases. Before it is extended into another 5 (five) years term, this document should be reviewed specifically in the implementation of plans of action in the field. Review's result should be encompassed in the subsequent five years document as additional background to determine more precise policies and measures.

**Secondly**, it is important to enforce relevant policies aiming to foster and preserve environment from unsustainable practices, however government should also consider to apply the rule by using persuasive approach particularly to traditional fishermen since it is related to their daily incomes for livelihoods. Some traditional fishermen were imprisoned due to breaching trawl and purse seine regulation. They argued that violating the regulation was the only choice to feed the family.<sup>177</sup> Learning from this case, before applying certain policies, MMAF should invite relevant stakeholders to discuss and formulate environmentally friendly policies in one side and accommodate small scale fishermen interests in another side. MMAF should be able to convince that the regulation is for the sake of their own interest and there will be no more fish if marine ecosystem is destructed. Public engagement in formulating policies can be drawn from Presidential Task Force of the U.S.

---

<sup>176</sup> "Susi Continues Legal Fight Against *Hai Fa*", *The Jakarta Post* (Jakarta), 20 June 2015. Available from <http://www.thejakartapost.com/news/2015/06/20/susi-continues-legal-fight-against-hai-fa.html>.

<sup>177</sup> "Sinking Illegal Fishing Vessels' Publicity aims to Scare, Susi Says", *The Jakarta Post* (Jakarta), 14 April 2016. Available from <http://www.thejakartapost.com/news/2016/04/14/sinking-illegal-fishing-vessels-publicity-aims-to-scare-susi-says.html>.

**Thirdly**, in some regions, moratorium and non-transshipment policy led to the closure of fish processing companies because of no more supply from ocean.<sup>178</sup> Minister Susi rebutted this claim by saying that those fish processing companies were closed long before moratorium policy commenced to take effect.<sup>179</sup> Indonesia Chamber of Commerce asserted that unemployment reached 600 thousand up to one million in fisheries sector and export has declined into almost 37% due to the policy.<sup>180</sup> Taking into account those impacts and as this policy has affected fisheries sectors, it is much better if MMAF conducted a comprehensive study examining advantages and disadvantages before policy was implemented. During examination, public consultation could be considered as one good option to gather concerns from public. Although pros and cons cannot be avoided in responding to a particular policy, this public meeting can be used to minimize negative impact arising out from the policy revealed.

**Fourthly**, there is a need to distinguish the roles of FAO (IUU fishing) and UNODC (fisheries crimes). This distinction is imperative for each organization to focus more on how to address the problem. In making those two international organizations more coordinated, regular collaboration and discussion between the two organizations should be organized more frequently. It is important also to bring to the fore the main responsibilities of UNODC and FAO in advocating member states to develop their domestic policy reforms on mutually agreed upon issues. UNODC and FAO may render technical assistance for member states.<sup>181</sup>

**Fifthly**, deficiencies of law enforcement encompasses 4 (four) aspects, namely; coordination, single door, lack of 3 (three) abilities and corruption. Commitment and awareness are of utmost importance to overcome coordination hurdle. However, a proper coordination mechanism plays important role as well. Through Presidential Regulation

---

<sup>178</sup> “Menteri Susi, JK dan Kapal Eks Asing (Minister Susi, JK and Ex-Foreign Fishing Vessels)”, *Gatra News* (Jakarta), 11 April 2016. Available from <http://www.gatra.com/fokus-berita-1/195125-menteri-susi-jk-dan-kapal-eks-asing>.

<sup>179</sup> “Susi Pudjiastuti: Pak Jusuf Kalla was Duped”, *Tempo Magazine Online* (Jakarta), 06 April 2016. Available from <http://en.tempo.co/read/news/2016/04/06/241760240/Susi-Pudjiastuti-Pak-Jusuf-Kalla-was-duped>.

<sup>180</sup> “Kadin: Satu Juta Pengangguran di Industri Perikanan (Indonesia Chamber of Commerce: One Million Unemployment in Fisheries Industry)”, *Gatra News* (Jakarta), 11 April 2016. Available from <http://www.gatra.com/fokus-berita-1/195202-kadin-satu-juta-penganggur-di-industri-perikanan>.

<sup>181</sup> United Nations Office on Drugs and Crime, “UNODC: a Brief Overview”, Documents: about UNODC, updated on 2 November 2016. Available from [https://www.unodc.org/documents/about-unodc/About\\_UNODC\\_.pdf](https://www.unodc.org/documents/about-unodc/About_UNODC_.pdf).

Number 115/2015 concerning Task Force to Eliminate Illegal Fishing, related government institutions such as MMAF, Ministry of Finance, Ministry of Foreign Affairs, Ministry of Transport, Indonesia Navy, Indonesia Police, Attorney General Office, Agency of Maritime Security, Centre for Indonesian Financial Transaction Reports and Analysis and Agency for State Intelligence are involved in countering illegal and unreported fishing activities. This task force has authority, among other things, to determine the target of law enforcement, gather data and information through coordination as well as establish and order members of task force to conduct law enforcement operation.<sup>182</sup>

This presidential regulation is a major leap to a strengthened coordination and to address issues not only inadequate coordination among law enforcers, but also other drawbacks of single door policy, lack of those three capabilities and corruption. Single door policy is asserted as an approach practiced by the previous regime. The investigation conducted by Indonesia authorities found that the ‘modus operandi’ of IUU fishing broadly encompasses “overfishing, tax fraud, money laundering, human trafficking” and so forth. As such, it is essential to have a different mechanism through “multi-disciplinary legal or multi-door approach”<sup>183</sup>. From this context, the former policy is deemed to be less effective in combatting IUU fishing, therefore the latter is introduced as an advanced robust and comprehensive measure to tackle the problem.

As elaborated by Husein, the rationales for taking the approach of multi-door are mainly based on the assessment that crimes committed in fisheries sectors are cross-sectoral while prevailing regulations on fisheries in Indonesia are asserted inadequately bring about the perpetrators before the justice and activities of IUU fishing generally involve the other crimes. He also explained that there are some advantages of having the approach, namely; widening the overview, multi-legal approach, cross-sectoral enforcements from different institutions, more coordinated measures and utilizing the principle of “follow the suspect and follow the asset”.<sup>184</sup> The principle can be a powerful tool to trace the functional mastermind as planner and decision maker and not only perpetrator in the field in which it

---

<sup>182</sup> Article 3 of Presidential Regulation Number 115/2015 concerning Task Force to Eliminate Illegal Fishing.

<sup>183</sup> Husein, “Indonesia’s Approach in Tackling Fisheries Crime”, (see chap. II, footnote 134).

<sup>184</sup> Ibid.

could lead to a stronger effect to the persons committing crimes and might the corporate operating it to liable.

Organization for Economic Co-operation and Development (OECD) is of the view that suspect and asset principle needs to be promoted based on the three following concerns:<sup>185</sup>

1. By following the revenue from IUU fishing, the true perpetrators along with their networks can be traced and brought before the court;
2. The profits resulted from IUU fishing should be halted as the more the operators of IUU fishing make money the more difficulty for them to be ceased; and
3. Investigation on financial transaction can be useful as an evidence that IUU fishing activity occurs. The investigation should be integrated to the whole strategy in combatting the crime by having cooperation with related fisheries institutions.

OECD is convinced that the clue to solve the problem is by following to where to the money is disbursed.

The notion to practice the approach of multi-door policy presents a holistic view in discerning and solving IUU fishing. This approach should also be viewed as a robust measure to impartially eliminate illegal activities occurred in fishing from capturing the fishes, processing until selling them into the market along with crimes following it. A publication from UNODC in 2011 can be a good example in depicting that transnational organized crime and criminal activities occurs in the fishing operations. The study focuses on the engagement of the fishing industry in the most related sorts of transnational organized crime such as trafficking in persons, people smuggling and illegal drugs and psychotropic materials trafficking including their connection to the other types of crimes such as “marine living resources crime, corruption, piracy and other security related crimes”.<sup>186</sup> From the research, it was evident the trafficking in persons was connected those crimes and the ruthlessness of persons trafficked to be forced labours in fishing vessels were probably the most annoying fact. They became “prisoners of the sea” vulnerable to several abuses.

---

<sup>185</sup> Antonia Leroy, “How to Ensure a Coherent International Response against IUU fishing”, Organization for Co-operation and Development. Updated on 18 September 2016. Available from <https://www.chathamhouse.org/sites/files/chathamhouse/Antonia%20Leroy.pdf>.

<sup>186</sup> UNODC, *Transnational Organized Crime in the Fishing Industry*, (see chap. I, footnote 11), p. 12.

Fishing vessels were discovered as a means for transporting illegal drugs and weapons, terrorism and smuggling illicit migrants.<sup>187</sup>

**Sixthly**, the formulation of Standard Operating Procedures (SOP) and Guidelines. Crimes chain is truly operated by criminals in fishing industry and it is not merely an anecdotal evidence. Therefore, law enforcement apparatus would face this circumstance when enforcing laws and regulations of fisheries. By using multi-door approach, they can conduct systematic investigations and mutual cooperation amongst various government and law enforcement authorities. This measure offers a full protection of related environmental protection laws as those related institutions would have a collated engagement. Nonetheless, it is needed to formulate the work of the law enforcement agencies more details through agreed sort of SOP and particular guidelines as following up of Presidential Regulation 115/2015. Those SOP and guidelines should be aligned to each other.

SOP should be dedicated for law enforcement officers to follow certain procedures when apprehending criminals committing IUU fishing, fisheries crimes and fisheries-associated crimes. According to FAO, SOP is defined as a document that depicts “the regularly recurring operations relevant to the quality of investigations”. The purpose of this SOP is “to carry out the operations correctly and always in the same manner”. It is further explained that “SOP should be available in the place where the work is done”.<sup>188</sup> The SOP can be useful when there are reports or indications of committed crimes such as illegal fishing, corruption or money laundering. Following the approach, the initial institution receiving the reports should then notify the other relevant institutions to initiate applicable action. Hence, those institutions can complement to each other through providing witness and experts from the other institutions when requested by prosecutors or police officers investigating the violations.

As for the guidelines, this is aimed to support the implementation of Presidential Regulation 11/2015. The guidelines may review the implementation of the measures to combat those

---

<sup>187</sup> Ibid, pp. 3-4.

<sup>188</sup> FAO, “Standard Operating Procedures”. Updated on 25 September 2016. Available from <http://www.fao.org/docrep/w7295e/w7295e04.htm>.

three activities and to provide as to how the measures should be put into effect. In addition to SOP and guidelines, there are some concerns that need to take into account: Firstly, it is necessary to build the capacity for informed and knowledgeable law enforcement officers and secondly, to make sure that all enforcement authorities explicitly incorporates the multi-door approach into their routine operations in order to incentivize obedience.

## **PART III**

### **LEGAL FRAMEWORKS**

#### **1. International and Domestic Contexts.**

In any societies, the existence of rules is necessary for them to function in a more orderly manner. Those rules are extended also for the communities responsible for the management and conservation of marine resources. As part of ocean governance, legal framework plays an important role in ensuring that marine resources are sustainably utilized. The governance holds certain norms, values and regulations on how to foster and prevent ocean resources from destruction and depletion that people should respect to and abide by. Yoshifumi Tanaka asserts that the increasing human exploration in the oceans led international rulers to manage their activities in the oceans. The branch of international rules binding “states and other subjects of international law in marine affairs is called

international law of the sea.” As a matter of fact, “the law of the sea is one of the oldest branches of public international law”.<sup>189</sup>

This part focuses on domestic and international instruments binding legally the states. In the Law of the Sea Convention (LOSC), it can be discovered various articles related to conservation and management of living marine resources including fisheries aspect. The discussion of this topic is dynamic and the issues of global ocean issues cannot be covered by LOSC alone. The other legally binding instruments and case law are also imperative as important reference to address the problems of IUU fishing and fisheries crimes. In the sense of domestic legislation, Indonesia has a number of legal instruments. Those international legally binding mechanisms will be presented in this part along with domestic legal instruments as main tools in assessing loopholes to fill in.

## **1.1 International Overview.**

### **1.1.1 Legally Binding Instruments.**

The Conference of Geneva on the Law of the Sea of 1958 has resulted 4 (four) important conventions; namely, the Geneva Conventions on the Territorial Sea and the Contiguous Zone,<sup>190</sup> on the High Seas,<sup>191</sup> on the Continental Shelf<sup>192</sup> and on Fishing and Conservation of the Living Resources of the High Seas<sup>193</sup> while the Geneva Conference of 1960 did not produce any convention. Those conventions have entered into force.<sup>194</sup> Although the

---

<sup>189</sup> Yoshifumi Tanaka, *the International Law of the Sea*, (the United Kingdom: Cambridge University Press, 2012), p. 3.

<sup>190</sup> United Nations, *Convention on the Territorial Sea and the Contiguous Zone*, 516 UNTS 205. Indonesia is neither a signatory nor a state party to this Convention. Available from <https://treaties.un.org/doc/publication/mtdsg/volume%20ii/chapter%20xxi/xxi-1.en.pdf>.

<sup>191</sup> United Nations, *Convention on the High Seas*. Indonesia is a State Party to the Convention on the High Seas of 1958 by signing and ratifying this Convention on 8 May 1958 and 10 August 1961. It is ratified through Law Number 19/1961. Available from [http://treaty.kemlu.go.id/uploads-pub/3962\\_MUL-1961-0032.pdf](http://treaty.kemlu.go.id/uploads-pub/3962_MUL-1961-0032.pdf).

<sup>192</sup> United Nations, *Convention on the Continental Shelf*. Indonesia is a signatory by signing this Convention on 8 May 1958 and as a state party by ratifying this Convention on 29 April 2016 through Law Number 19/1961. Available from [http://treaty.kemlu.go.id/uploads-pub/4175\\_MUL-1961-0031.pdf](http://treaty.kemlu.go.id/uploads-pub/4175_MUL-1961-0031.pdf).

<sup>193</sup> United Nations, *Convention on the Living Resources of the High Seas*. Indonesia is a signatory by signing this Convention on 8 May 1958 and as a State Party by ratifying this Convention on 29 April 1958 through Law Number 19/1961. Available from [http://treaty.kemlu.go.id/uploads-pub/3959\\_MUL-1961-0030.pdf](http://treaty.kemlu.go.id/uploads-pub/3959_MUL-1961-0030.pdf).

<sup>194</sup> Martin Tsamenyi, Clive Schofield, and Ben Milligan, “Navigation through Archipelagos” in *Freedom of Seas, Passage Rights and 1982 Law of the Sea Convention*, Myron H. Nordquist, Tommy Thong Bee and Koh John Norton More, eds (Center for Ocean Law and Policy, 2009) p. 415. Convention on the Territorial Sea and Contiguous Zone, opened for signature 29 April 1958, 516 UNTS 205 (entered into force 10 September 1964); Convention on the Continental Shelf, opened for signature 29 April 1958, 499 UNTS 311 (entered into force 10 June 1964); Convention on the High Seas, opened for signature 29 April 1958, 450 UNTS 11 (entered into force 30 September 1962); and Convention on Fishing and Conservation of Living Resources of the High Seas, opened for signature 29 April 1958, 559 UNTS 285 (entered into force 20 March 1966).

conventions were praised as the great achievement, some issues remain unresolved such as the fundamental questions on the territorial sea width, fishing rights beyond coastal states' territories, fisheries resources conservation, continental shelf due to new technology of underwater exploration and coastal states' responsibility on pollution. More importantly, some post-colonial states excluding Indonesia had not involved in drafting the Geneva Conventions, leading to the request to convene the Third United Nations Conference on the Law of the Sea (UNCLOS III).<sup>195</sup>

The member states of the third conference agreed to adopt Law of the Sea Convention (LOSC) on 10 December 1982.<sup>196</sup> The Convention is known as the Constitution of the Ocean as this is an umbrella for all international regulations governing ocean affairs. After completing negotiations for about 9 (nine) years,<sup>197</sup> this Convention came into force on 16 November 1994 encompassing in general the provisions of marine-related issues such as the management of marine resources and spaces.<sup>198</sup> In the preamble, fisheries aspect is covered through member states' recognition for "the equitable and efficient utilization of their resources, the conservation of their living marine resources, and the study, protection and preservation of the marine environment".<sup>199</sup> The principles are related to the conservation and management of marine living resources in the regimes of EEZ, continental shelf and high seas as territorial seas, internal waters and archipelagic waters fall under the sovereignty of coastal states.

As referred to Articles 56(1) and 77(1) of the LOSC as well as international custom, the coastal states have the sovereign rights in the EEZ and continental shelf.<sup>200</sup> In Article 56 (1), it is important to highlight that the sovereign rights are limited only to the economic exploitation and exploration of EEZ (limitation *ratione materiae*).<sup>201</sup> Coastal state has exclusivity in the sense that no state can conduct activity in continental shelf without the

---

<sup>195</sup> David Harris, *Cases and Materials on the International Law*, (London: Sweet and Maxwell, 2004), pp. 380-381.

<sup>196</sup> See Article 320 of the Law of the Sea Convention (LOSC). United Nations, *Treaty Series*, vol. 1833, 1834 and 1835, No. 31363.

<sup>197</sup> Harris, *Cases and Materials on the International Law*, (see chap. III, footnote 195), p. 381.

<sup>198</sup> Palma, Tsamenyi and Edeson, *Promoting Sustainable Fisheries*, (see chap. I, footnote 4), p. 58.

<sup>199</sup> See Preamble of LOSC.

<sup>200</sup> See Articles 56(1) and 77(1) of the LOSC.

<sup>201</sup> Yoshifumi Tanaka, *the International Law of the Sea*, (see chap. II, footnote 189), p. 127.



express consent of coastal states if they do not explore the continental shelf or exploit its natural resources.<sup>202</sup> According to Tanaka, it can be argued that sovereign rights along with express consent principle also apply to the activities in EEZ.<sup>203</sup> Coastal states have obligation to the promotion of the objective of optimum utilization of the living resources in EEZ and the determination of its capacity to harvest the total allowable catch.<sup>204</sup>

Nevertheless, other states such as developing states, land-locked states and geographically disadvantaged states have rights to access the surplus of the allowable catch in the case the coastal states does not have the capacity to harvest total allowable catch through the conclusion of agreements or other arrangements.<sup>205</sup> It is an obligation also for coastal states in the EEZ to ensure proper conservation and management efforts to prevent the living resources from over-exploitation based on the best scientific evidence. There shall be cooperation between coastal states and related international organizations in the levels of subregional, regional and global.<sup>206</sup> When fishing in the EZZ, nationals of other states shall abide by the conservations measures and other laws and regulations of the coastal states.

Those laws and laws and regulations shall not in contravention to the LOSC and may have relation to the license of fishermen, fishing vessels and equipment; the determination of the species that may be caught; the regulation of the seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used; the fix of the age and size of fish; the specific information concerning fishing vessels; the conduct of specific fisheries research program; the assigning of observers or trainees on board; the landing of all or any part of the catch; terms and conditions to joint ventures or other cooperative arrangements; the requirements for personnel's training and technology transfer; and procedures of enforcement.<sup>207</sup>

As a consequence of the establishment of EEZ regime, fishermen of distant fishing states catch fishes in the high seas and make some fish resources overexploited. There is a serious

---

<sup>202</sup> See Article 77(2) of the LOSC.

<sup>203</sup> Yoshifumi Tanaka, *the International Law of the Sea*, (see chap. II, footnote 189), p. 127.

<sup>204</sup> See Article 62(1) of the LOSC.

<sup>205</sup> See Articles 62(1)(2), 69 and 70 of the LOSC.

<sup>206</sup> See Article 61(2) of the LOSC.

<sup>207</sup> See Article 62(4) of the LOSC.

concern on the current fish stocks circumstance in the high seas. As stated in the United Nations Secretary General Report submitted to the resumed Review Conference on the Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the overall status of highly migratory stocks have declined, although some fish stocks have improved since the previous assessment in 2010. In detail, there was a stagnant fish stock level of 69 per cent, the deterioration of 20 per cent and the improvement of 11 per cent of fish stocks.<sup>208</sup>

In the high seas, one of six principles applied is freedom of fishing. However, this freedom is not unlimited and subject to conditions laid down in Section 2, Part VII.<sup>209</sup> Furthermore, Article 116 stipulates that all states have the right for their nationals to engage in fishing on the high seas subject to: a) treaty obligations; b) the rights and duties as well as the interests of coastal states provided for, *inter alia*, in article 63, paragraph 2, and articles 64 to 67; and c) the provisions of section 2, Part VII.<sup>210</sup> The duty for all states to take, or to cooperate with other states in taking, such measures for their respective nationals as may be necessary for the conservation of living marine resources of the high seas is contained in Article 117.<sup>211</sup>

States also have obligation to have cooperation with other states in the conservation and management of living resources in the high seas through the establishment of subregional or regional fisheries organizations.<sup>212</sup> In addition, there is a duty for states to cooperate on the management of straddling stocks,<sup>213</sup> highly migratory species,<sup>214</sup> anadromous<sup>215</sup> and catadromous.<sup>216</sup> The provisions related to the duty to cooperate pave the way for the formation of RFMOs.

---

<sup>208</sup> Report submitted to the resumed Review Conference on the Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, 1 March 2016 (A/CONF.210/2016/1).

<sup>209</sup> See Article 87(1)(e) of the LOSC.

<sup>210</sup> See Article 116 of the LOSC.

<sup>211</sup> See Article 117 of the LOSC.

<sup>212</sup> See Article 118 of the LOSC.

<sup>213</sup> See Article 63 of the LOSC.

<sup>214</sup> See Article 64 of the LOSC.

<sup>215</sup> See Article 65 of the LOSC.

<sup>216</sup> See Article 66 of the LOSC.

The practice of reflagging, flag of convenience and the issue of genuine link have altogether contributed to IUU fishing activities. In evading the prevailing regulations applied by RFMOs, vessel alters their flag from a state party to a non-state party member. Reflagging remains main problem since “the requirements for flag state to exercise control over their vessels are weak and subject to manipulation as well as being based on state consent”. Flag of convenience is referred to the states that do not necessitate their vessels to conform to the RFMO’s rules when fishing in their convention area or oblige the regulations set in the relevant international legally binding instruments.<sup>217</sup> The practice is difficult to be halted since it depends more on each state’s domestic policy and awareness to preserve fisheries resources.

When fishing in the high seas, flag state has ultimate responsibility in managing and conserving marine living resources and combatting IUU fishing. In the global level, two recognized legally binding instruments concerning flag states responsibilities are the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement) and the 1995 United Nations Fish Stock Agreement (UNFSA). Nevertheless, LOSC has provision on flag responsibility as well.<sup>218</sup> FAO Compliance Agreement was adopted on 24 November 1993 and has entered into force on 24 April 2003<sup>219</sup> while UNFSA was adopted on 4 August 1995 and entered into force on 11 December 2001.<sup>220</sup>

In the FAO Compliance Agreement, it is imperative for fishing vessels “to exercise effectively its jurisdiction and control over vessels flying its flag, including fishing vessels and vessels engaged in the transshipment of fish”.<sup>221</sup> In the preamble, the practice of flagging and

---

<sup>217</sup> Rachel Baird, “Illegal, Unreported and Unregulated Fishing: An Analysis of the Legal, Economic and Historical Factors Relevant to Its Development and Persistence”, *Melbourne Journal of International Law*, vol.5 (2004), p.14.

<sup>218</sup> See Article 94 of the LOSC.

<sup>219</sup> David Balton, “the Compliance Agreement”, in *Development in International Fisheries Law*, Helen Hey, ed, (Hague: Kluwer Law International, 1999), p. 34. As of 14 October 2014, 40 countries has consented to be bound the Compliance Agreement by means of acceptance.

<sup>220</sup> Jean-Jacques Maguire and others, *FAO Technical Paper: the State of World Highly Migratory, Straddling and Other High Seas Fishery Resources and Associated Species* (Rome: Information Division of FAO, 2006), p. 2. As of 2 September 2016, the UNFSA was signed by 59 states and entities.

<sup>221</sup> See Preamble of the Compliance Agreement.

reflagging is identified as one of the factors undermining the international conservation and management measures for living marine resources.<sup>222</sup> The Compliance Agreement provisions are intended to apply all fishing vessels undertaking their activities in the high seas with particular arrangement for fishing vessels of less than 24 meters.<sup>223</sup> It covers state responsibility including genuine link as stated in Article III.<sup>224</sup> The others provisions such as records of fishing vessels,<sup>225</sup> exchange of information,<sup>226</sup> non-parties<sup>227</sup> and international cooperation,<sup>228</sup> in particular with developing countries<sup>229</sup> are main aspects regulated under this Agreement.

The United Nations Fish Stock Agreement (UNFSA) provides the principles of the conservation and management of those straddling fish stocks and highly migratory fish stocks and lies the foundation that the management shall be based on the precautionary approach and the best available evidence.<sup>230</sup> In achieving this objective, the UNFSA sets out the mechanism for cooperation in the conservation and management of the resources through the promotion of the optimum utilization of resources of fisheries<sup>231</sup> within areas under and beyond national jurisdiction.<sup>232</sup> The approach to ensure effective conservation and management of such fish stocks are the cooperation either directly or indirectly through appropriate sub-regional or regional fisheries management organizations or arrangements.<sup>233</sup>

---

<sup>222</sup> See Preamble of the Compliance Agreement.

<sup>223</sup> See Article II of the Compliance Agreement.

<sup>224</sup> See Article III(2) of the Compliance Agreement.

<sup>225</sup> See Article IV of the Compliance Agreement.

<sup>226</sup> See Article VI of the Compliance Agreement.

<sup>227</sup> See Article VIII of the Compliance Agreement.

<sup>228</sup> See Article V of the Compliance Agreement.

<sup>229</sup> See Article VII of the Compliance Agreement.

<sup>230</sup> See Article 5(b)(c) of the UNFSA.

<sup>231</sup> Division for Ocean Affairs and the Law of the Sea (DOALOS), “the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stock (in force as from 11 December 2001) Overview”. Updated on 2 September 2016. Available from [http://www.un.org/depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](http://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm).

<sup>232</sup> See Article 3 of the UNFSA.

<sup>233</sup> See Article 8 of the UNFSA.

The effective control of flag state and international cooperation are dual objectives as set out in the UNFSA.<sup>234</sup> Article 18(1), flag states have obligation to make sure that their fishing vessels conform to sub-regional and regional conservation and management measures and prohibit the vessels to engage any activity undermining the effectiveness of such efforts.<sup>235</sup> During Review Conference on the UNFSA, some progresses developed by flag states in undergoing effective control over vessels flying their flags were appraised. Nevertheless, there was also a concern expressed by delegations on the increasing number of fishing vessels undertaking IUU fishing in several regions.<sup>236</sup> The following provisions are, among others, related to compliance and enforcement including cooperation mechanism<sup>237</sup> along with detail arrangement such as basic procedures for boarding and inspection.<sup>238</sup> The role of port state is acknowledged to promote the effectiveness of such measures.<sup>239</sup>

Another robust tool to address IUU fishing is the FAO PSMA. This Agreement was approved by the FAO Conference at its Thirty-sixth Session in Rome on 18-23 November 2009 under Paragraph 1 of Article XIV of the FAO Constitution, through Resolution No 12/220 dated 22 November 2009. This Agreement entered into force on 5 June 2016 after reaching 25<sup>th</sup> instrument of ratification, acceptance, approval or accession on 6 May 2016. As of 30 August 2016, 47 countries and European Union have consented to be bound by this Agreement.<sup>240</sup> Indonesia has ratified this FAO PSMA through Presidential Regulation Number 43/2016.<sup>241</sup> This is the only legally binding international instrument combatting IUU fishing emphasizing on port state responsibility. The role of flag states is also recognized in ensuring the successful implementation of this FAO PSMA.<sup>242</sup>

---

<sup>234</sup> Yoshifumi Tanaka, *A Dual Approach to Ocean Governance: the Cases to Zonal and Integrated Management in the Law of the Sea*, (London and New York: Routledge, 2016), p. 97.

<sup>235</sup> See Article 18(1) of the UNFSA.

<sup>236</sup> *Report of the resumed Review Conference on the Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York, 1 August 2016 (A/CONF.210/2016/5). Para 112.*

<sup>237</sup> See Article 19, 20 and 21 of the UNFSA.

<sup>238</sup> See Article 22 of the UNFSA.

<sup>239</sup> See Article 23 of the UNFSA.

<sup>240</sup> FAO, "Agreement on Port State Measure to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing". Updated on 30 August 2016. Available from [http://www.fao.org/fileadmin/user\\_upload/legal/docs/037s-e.pdf](http://www.fao.org/fileadmin/user_upload/legal/docs/037s-e.pdf).

<sup>241</sup> Indonesia, Presidential Regulation Number 43/2016 on the Ratification of Agreement on Port State Measure to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Available from <http://www.hukumonline.com/pusatdata/download/lt573c51fda7792/node/lt573c51d1369f1>.

<sup>242</sup> See Article 20 of the FAO PSMA.

Compared to that of law enforcement at sea, port state measure is acclaimed as the most efficient and cost effective way to fight against IUU fishing particularly for developing states.<sup>243</sup> In general, there are three major stages covered by this FAO PSM: before entering a port, during docking at a port and after inspections. In the first stage, the port state can ban vessels from entering into its port if sufficient evidence of IUU fishing activities is found.<sup>244</sup> However, in the case of force majeure or distress, fishing vessels shall be permitted to entry into port to receive assistance.<sup>245</sup>

When anchored at the port, if the vessel is proven to have engaged in IUU fishing, port states are obliged to prohibit landing, transshipping as well as processing and packing of fish as well as the other port services.<sup>246</sup> After the refusal, notification is delivered to the flag state, regional fisheries management organizations and related international organizations.<sup>247</sup> This measure aims to widely disseminate information as soon as possible, so that other states can be aware of the situation and take concrete, real-time action. As for the last resort, if there is convincing evidence that the vessel was engaged in IUU fishing, the vessel is banned from activities including refueling, logistics, maintenance and dry docking.<sup>248</sup>

In order to provide more comprehensive information concerning Indonesia's commitment on international legally binding instrument, the following is the list of international conventions and agreements related to living marine resources in which Indonesia has provided its consent to be bound.<sup>249</sup>

**Table 1: International Conventions and Agreements related to Living Marine Resources  
Ratified by Indonesia**

---

<sup>243</sup> FAO, "World's First Illegal Fishing Treaty Now in Force". Updated on 19 October 2016. Available from <http://www.fao.org/news/story/en/item/417286/icode/>.

<sup>244</sup> See Article 9 of the FAO PSM.

<sup>245</sup> See Article 10 of the FAO PSM.

<sup>246</sup> See Article 11(1) of the FAO PSM.

<sup>247</sup> See Article 11(3) of the FAO PSM.

<sup>248</sup> See Article 18(1)(b) of the FAO PSM.

<sup>249</sup> Ministry of Foreign Affairs of Indonesia, "the List of International Treaty registered in the Ministry of Foreign Affairs of Indonesia". Updated on 15 November 2016. Available from [http://treaty.kemlu.go.id/index.php/treaty/index?fullPage=1&Treaty%5Bwork\\_field\\_id%5D=45](http://treaty.kemlu.go.id/index.php/treaty/index?fullPage=1&Treaty%5Bwork_field_id%5D=45).

No	Convention	Year of Ratification
1.	Convention on the High Seas	1958
2.	Convention on the Continental Shelf	1958
3.	Convention on Fishing and Conservation of the Living Resources of the High Seas	1958
4.	Convention on the Law of the Sea	1985
5.	Convention on the Conservation of Southern Bluefin Tuna	2008
6.	Agreement for the Establishment of the Indian Ocean Tuna Commission	2007
7.	Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, 10 December 1982	2000
8.	Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	2009
9.	Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean	2013

ng IUU fishing and fisheries crimes determines significantly the compliance of states in managing and conserving fisheries resources. Article 73 of LOSC provides laws and regulations enforcement exerted by coastal states in EEZ:<sup>250</sup>

1. The coastal State may, in the exercise of its sovereign rights to explore, exploit, conserve and manage the living resources in the exclusive economic zone, take such measures, including boarding, inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with this *Convention*.
2. Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security.
3. Coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment.
4. In cases of arrest or detention of foreign vessels the coastal State shall promptly notify the flag State, through appropriate channels, of the action taken and of any penalties subsequently imposed.

Some important principles are applied in Article 73 such as sovereign rights in EEZ, prompt release and posting reasonable bond or other security, the exclusion of imprisonment with certain conditions when violating fisheries laws and regulations, as well as prompt notification to the flag states after the arrest and detention of fishing vessels. Article 73(1)

<sup>250</sup> See Article 73 of LOSC.

has provided the coastal states to exercise the right of hot pursuit as stated in Article 111(2)<sup>251</sup> for foreign fishing vessels that attempts to escape from law enforcement efforts.

Further application concerning prompt release of vessels and crews is regulated under Article 292 of LOSC stating that:<sup>252</sup>

Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

In the case of detained vessel and crews which is not promptly released upon the posting of reasonable bond, flag states may bring the case before any court or tribunal as mutually agreed upon by the parties. Nevertheless, particular arrangement is paid in the case the parties cannot reach an agreement within 10 days through application to court or tribunal under Article 287 or to ITLOS. As such, the consent of detaining state is compulsory. When signing, ratifying or acceding LOSC, state party shall be free to choose one or more 4 (four) means for dispute settlement on the interpretation and application of LOSC through written declaration. Those choice of procedures are: a) ITLOS, b) the International Court of Justice (ICJ), c) arbitral tribunal in accordance with Annex VII, and d) a special arbitral tribunal in accordance with Annex VIII for one or more of the categories of disputes therein.<sup>253</sup>

There have been a number of submissions to International Tribunal on the Law of the Sea (ITLOS) evoking Article 292 since the establishment of ITLOS. As of 26 October 2016, a total of 25 cases have been submitted to the Tribunal. Most cases are related to prompt release (nine cases).<sup>254</sup> One of cases applying Article 73 is illustrated by the Case of *the "Camouco"* (*Panama v. France*) on Prompt Release. French government arrested the Panamanian-flagged *Camouco* and the Seychelles-flagged *Monte Confurco* in August and September

---

<sup>251</sup> See Article 111(2) of LOSC. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

<sup>252</sup> See Article 292(1) of LOSC.

<sup>253</sup> See Article 287(1) of LOSC

<sup>254</sup> ITLOS, "List of Cases", Updated on 23 October 2016. Available from <https://www.itlos.org/en/cases/list-of-cases/>



1999. Those vessels were convinced to have involved in illegal fishing in the EEZ of French. The case, then, was brought before ITLOS under Article 73 and 292 of the LOSC. Another instance of prompt release is *the "Volga" Case (Russian Federation v. Australia)*. A Russian fishing vessel was arrested by Australian authority for violating sovereign rights near the Heard and McDonald Islands of Australia EEZ. The case was also brought before the Tribunal concerning the applications of Article 73 and 292 of LOSC.<sup>255</sup>

Legal question on the amount of bond determined by the arresting state as stated in Articles 73 and 292 of LOSC was addressed in those two cases.<sup>256</sup> In the "*Camouco*" Case, the judges of the Tribunal identified the relevant aspects to assess "the reasonableness of bond or other financial security" as follows:<sup>257</sup>

The Tribunal considers that a number of factors are relevant in an assessment of the reasonableness of the bonds or other financial security. They include the gravity of the alleged offences, the penalty imposed or imposable under the laws of the detaining State, the value of the detained vessels and of the cargo seized, the amount of the bond imposed by the detaining State and its form.

The list was not intended as a complete factors. Nor does the Tribunal aim to set the inflexible rules. Those factors are complement to the adjudication of the *M/V "SAIGA"* Case, in the following:<sup>258</sup>

In the view of the Tribunal, the criterion of reasonableness encompasses the amount, the nature and the form of the bond or financial security. The overall balance of the amount, form and nature of the bond or financial security must be reasonable.

In 2015, ITLOS received submission by the Sub-Regional Fisheries Commission (SRFC) regarding Illegal, Unreported and Unregulated Fishing.<sup>259</sup> The background for the submission was the consideration that the principle of exclusive jurisdiction of flag states contained in LOSC was inadequate in making sure the compliance with and enforcement of rules.<sup>260</sup> This intergovernmental organization After particular considerations from

---

<sup>255</sup> Dikdik Mohammad Sodik, "Combating Illegal, Unreported and Unregulated Fishing in Indonesian Waters: the Need for Fisheries Legislative Reform", PhD dissertation, University of Wollongong, 2007, p. 60.

<sup>256</sup> Liza D. Fallon and Leorne K. Kriwoken, "International Influence of An Australian Non-Government Organization in the Protection of Patagonian Toothfish", *Ocean Development and International Law*, Vol. 35, No. 3, 2004, p. 241.

<sup>257</sup> "*Camouco*" (*Panama v France*), *Prompt Release, Judgment, ITLOS Reports 2000*, p. 67.

<sup>258</sup> *M/V "SAIGA"* (*Saint Vincent and the Grenadines v. Guinea*), *Prompt Release, Judgment, ITLOS Reports 1997*, p. 82.

<sup>259</sup> ITLOS, "List of Cases", updated on 27 October 2016. Available from <https://www.itlos.org/en/cases/list-of-cases/case-no-21/>.

<sup>260</sup> Victor Alencar Mayer Feitos Ventura, "Tackling Illegal, Unregulated and Unreported Fishing: the ITLOS Advisory Opinion on Flag State Responsibility for IUU Fishing and the Principle of Due Diligence", *Brazilian Journal of International Law*, vol. 12, No. 1, 2015, p. 60.

participants contending and in favouring to Articles 16 and 21 of the Statute of the ITLOS and Article 138 of the Tribunal, the judges have come into decision for the Tribunal to have jurisdiction to entertain the request submitted to it by SRFC. The jurisdiction of the Tribunal is limited to the EEZ of the SRFC Member States.<sup>261</sup> Article 16 reads “The Tribunal shall frame rules for carrying out its functions. In particular it shall lay down rules of procedure” while Article 21 of the Statute reads as follows:

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

Furthermore, Article 138 of the Rules states:

- 1.The Tribunal may give an advisory opinion on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion.
- 2.Request for an advisory opinion shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal.
- 3.The Tribunal shall apply *mutatis mutandis* articles 130 to 137.

SRFC has submitted 4 (four) following original questions to obtain advisory opinion from ITLOS:<sup>262</sup>

- 1.What are the obligations of the flag State in cases where illegal, unreported and unregulated (IUU) fishing activities are conducted within the Exclusive Economic Zone of third party States?
- 2.To what extent shall the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag?
- 3.Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question?
- 4.What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?

For the first question, the Tribunal referred to Articles 192 and 193 of LOSC in which the flag state shall undertake necessary measure to ensure that its vessels abide by the protection and preservation measures adopted by the member states of the SRFC.<sup>263</sup> The flag state shall also exercise effectively its jurisdiction and control in administrative matters over its vessel particularly by marking properly to such vessel.<sup>264</sup> Furthermore, flag state has obligation to impose adequate sanctions over its fishing vessels flying its flag when committing IUU fishing to prevent violations and deprive offenders of the benefits acquired

---

<sup>261</sup> Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, para 69.

<sup>262</sup> Ibid, para 2.

<sup>263</sup> Ibid, para 136.

<sup>264</sup> Ibid, para 137.

from their IUU fishing activities.<sup>265</sup> It is important to note that the sanction is not only for the purpose of prevention measure but also to confiscate the advantages taken by the perpetrators.

As second question is related to the flag state's liability, the Tribunal evoked the Draft Articles 1, 2 and 31 (paragraph 1) of the International Law Commission on Responsibility of States for Internationally Wrongful Acts as the rules of general international law.<sup>266</sup> The Tribunal clearly made a reference to due diligence obligations from Articles 125 to 140 as well as distinguished between due diligence obligations and result obligations.<sup>267</sup> Further important explanation is the definition of "due diligence obligations" as provided by the ICJ in the *Pulp Mills on the River Uruguay case*, as follows:<sup>268</sup>

It is an obligation which entails not only the adoption of appropriate rules and measures, but also a certain level of vigilance in their enforcement and the exercise of administrative control applicable to public and private operators, such as the monitoring of activities undertaken by such operators, to safeguard the rights of the other party. The responsibility of a party to the 1975 Statute would therefore be engaged if it was shown that it had failed to act diligently and thus take all appropriate measures to enforce its relevant regulations on a public or private operator under its jurisdiction.

In the case that flag state has undergone all necessary and appropriate efforts to conform with "due diligence obligations" to make sure that its fishing vessels do not undertake IUU fishing, the flag state is not liable to it.<sup>269</sup>

Third question is more complicated and multi-interpretation in which the Tribunal needed to further illuminate the term of international agency and the scope of the question. It was reiterated that when international organization has concluded a fisheries access agreement with SRFC member state, international organization bears the responsibility upon its member states. Hence, the international organization shall ensure that its member states' fishing vessels do not breach fisheries laws and regulations of the SRFC member states and not undergo IUU fishing activities.<sup>270</sup> This is to confirm also international organization's liability if its member states constitute to a breach of fisheries access agreement in the SRFC Member States.

---

<sup>265</sup> Ibid, para 138.

<sup>266</sup> Ibid, para 144.

<sup>267</sup> Ventura, "Tackling Illegal, Unregulated and Unreported Fishing", (see chap. III, footnote 260), p. 62.

<sup>268</sup> Request for Advisory Opinion (see chap. II, footnote 261), para 133.

<sup>269</sup> Ibid, para 148.

<sup>270</sup> Ibid, para 172.

Fourth question was pointed particularly on shared stocks in the EEZ of the SRFC member states particularly small pelagic species and tuna. The Tribunal was of the view that Articles of 61, 62, 73 192 and 193 of the LOSC are relevant to the question.<sup>271</sup> Those articles are basic references for the conservation and management of marine living resources. The member states of SRFC have right to conclude agreement with the other members of SRFC to coordinate and ensure the conservation and development of their shared stocks. Nonetheless, they also have obligation to make sure the management of shared stocks sustainably in their EEZ by developing several measures.<sup>272</sup>

## **1.2 Domestic Overview**

### **1.2.1 Recent Developments: Indonesia's Measures to Address TOFC and IUU Fishing**

Along with policy aspect, legal instrument plays a key role in ensuring the conservation and management of living marine resources from degradation, particularly the depletion of fisheries resources. Within the ambit of domestic legal instrument, marine resource management in Indonesia has been governed through a complex regulatory system.<sup>273</sup> As an umbrella of laws and regulation, Article 33(3) of the 1945 Constitution of the Republic of Indonesia reads "Land and water and natural resources therein shall be controlled by the State and shall be utilized for the greatest benefit of or welfare of the people".<sup>274</sup>

After Indonesia declared its independence in 1945, Indonesia's legislative system was deemed as "one of the most formidable legislative frameworks in the world".<sup>275</sup> Pursuant to Article 7 of Law Number 12/2011 concerning the Establishment of Laws and Regulations, the 1945 Constitution occupies the supreme law, followed by People's Consultative Assembly Decree. Third position is Laws or Government Regulations in Lieu of Law while fourth level is Government Regulation. The last three positions are Presidential Regulation, Provincial Regulation and Regional/Municipal Regulation. In addition, the other regulations such as regulation of House of Representatives and ministerial regulation are recognized in

---

<sup>271</sup> Ibid, para 180.

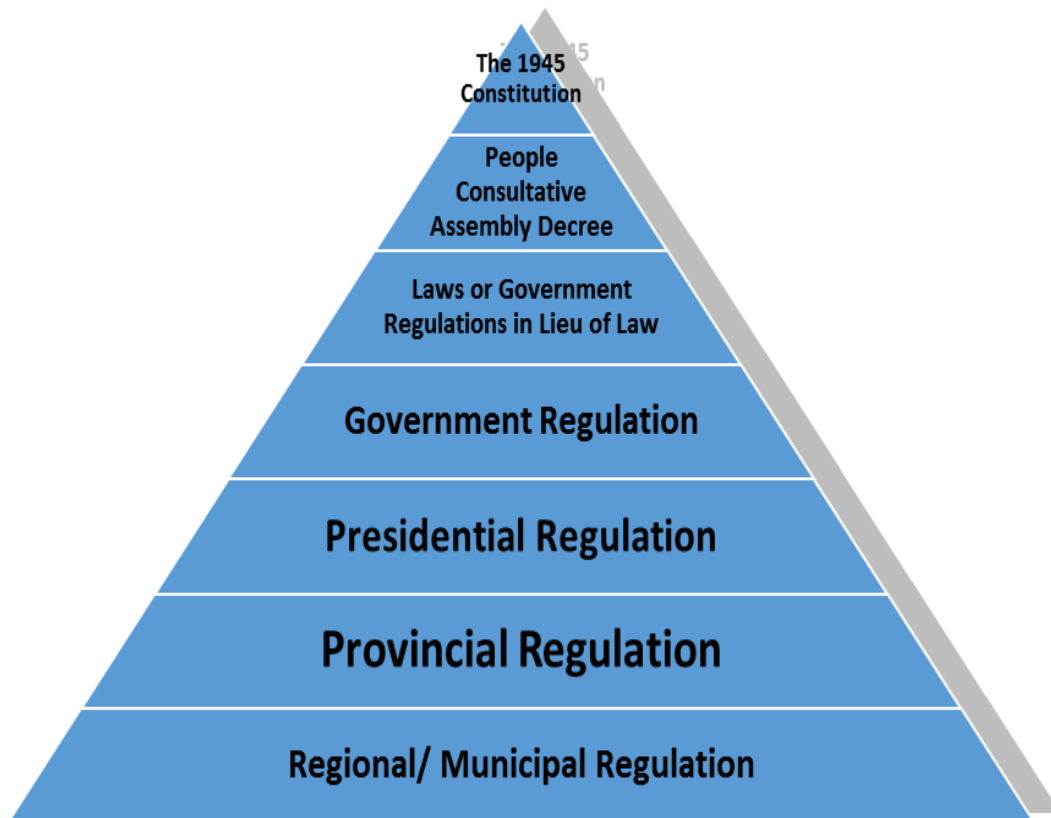
<sup>272</sup> Ibid, para 207.

<sup>273</sup> Asian Development Bank, *State of Coral Triangle: Indonesia* (the Philippines, 2014). Available from <http://coraltriangleinitiative.org/sites/default/files/resources/SCTR-IN.pdf> (accessed 17 October 2016), p. 15.

<sup>274</sup> Indonesia, the Constitution of the Republic of Indonesia, Constitution 1945, Article 33 (2).

<sup>275</sup> Tomascik and others, *The Ecology of the Indonesian Seas (Part One)*, (Periplus Edition, 1997), p. 2.

the legislative system.<sup>276</sup> The following is the hierarchy of Indonesia's laws and regulations in accordance with Article 7(1), as depicted in Figure 3:



**Figure 3: the Hierarchy of Indonesia's Laws and Regulations**

Indonesia pays particular interest to fisheries embedded in its domestic legal system in the form of laws and regulations. The main legal instrument governing fisheries resources is Law No. 45/2009 as amendment to Law No. 31/2004 concerning Fisheries. Main objective of Law No. 45/2009 is to better address the problem of illegal and unreported<sup>277</sup> and unregulated fishing. This law addresses challenges of new technology invention, better coordination amongst related institutions involved in fisheries management and “matters of jurisdiction and the competency of regency-level court's traditional scope of authority”. Further, it aims also to engage local administrations more.<sup>278</sup> The amended Law 31/2004 was not conceived to have increased the sustainable income through fisheries management, surveillance and

<sup>276</sup> Indonesia, the Constitution of the Republic of Indonesia, Constitution 1945, Article 8(1)(2).

<sup>277</sup> Conservation and Community Investment Forum, *Indonesia Country Report Assessment of the Enabling Conditions for Rights-Based Management of Fisheries and Coastal Marine Resources* (San Francisco, 2013). Available from [http://www.trustforconservationinnovation.org/sponsored/inc/CCIF\\_Indonesia\\_web.pdf](http://www.trustforconservationinnovation.org/sponsored/inc/CCIF_Indonesia_web.pdf) (accessed on 18 October 2016).

<sup>278</sup> Ibid.

optimal law enforcement.<sup>279</sup> As a primary law, Fisheries Law does not govern very technical aspect of fisheries. The other issues of fisheries such as fishing vessel registration and licensing, licensing of fisheries business, fish monitoring system and the other aspects are regulated under ministerial regulations, ministerial decrees, governmental regulations<sup>280</sup> and director general decrees.

It is commonly observed that the perpetrators of criminal acts incline to conceal or camouflage money and asset acquired from the activities. This aims for authorities to have difficulty in tracing those assets so that they can spend it legally or illegally. In anti-money laundering, the perpetrators and their illegal assets can be spotted through tracing mechanism. By confiscating the illegal assets and detaining the criminals, crime rate can be diminished. This principle can be applied to the assets from illegal fishing and fisheries crimes as well. Indonesia has enacted Law Number Law 8/2010 concerning Countermeasures and Eradication of Money Laundering. In this law, any assets shall be classified as result of criminal acts if those are acquired from illegal activities such as, among others, corruption, bribery, immigrant smuggling, human trafficking, labour smuggling, crimes in taxation, crimes in environment, crimes in marine and fishery or other crimes treated with the imprisonment for 4 (four) years or more.<sup>281</sup>

In terms of punishment, Article 3 of Law Number 8/2010 reads:<sup>282</sup>

Anyone, who places, transfers, forwards, spends, pays, grants, deposits, takes to the abroad, changes the form, changes to the currency or securities or other deeds towards the Assets of which are recognized or of which are reasonably alleged as the result of criminal action, as set forth in Article 2 section (1) with the purpose to hide or to disguise the origin of Assets, shall be subject to be sentenced due to the criminal action of Money Laundering with the imprisonment for no longer than 20 (twenty) years and fine for no more than Rp10,000,000,000.00 (ten billion rupiah).

Different degree of punishment is applied depending on its gravity in committing such crime either in passive or active manners. Moreover, if it is committed by corporations, the

---

<sup>279</sup> Indonesia, Law No. 31/2004 as amended by Law No. 45/2009 on Fisheries, Fisheries Law, “Considering” paragraph.

<sup>280</sup> Rose, “Combating Transnational Environmental Crime”, (see chap. II, footnote 162) p. 104.

<sup>281</sup> Indonesia, Law No. 8/2010 on Countermeasures and Eradication of Money Laundering, Money Laundering Law, Article 2.

<sup>282</sup> Indonesia, Law No. 8/2010 on Countermeasures and Eradication of Money Laundering, Money Laundering Law, Article 3.

sentence shall be subject to the corporation and/or corporation control personnel.<sup>283</sup> Fine for no more than Rp100,000,000 (one hundred billion rupiahs) shall be imposed to the corporation as primary sentence. Moreover, additional sentence shall be enforced in the case of a) announcement of judge's verdict; b) suspension on the overall or partial business activity of the Corporation; c) revocation of the business license; d) dissolution or restriction of the Corporation; e) Confiscation of the Corporation's assets for the State; and/ or f) Corporation takeover by the State.<sup>284</sup> An independent institution, Financial Transaction Report and Analysis Center (PPATK), is established by Indonesia Government to prevent and eradicate the crime of money laundering.<sup>285</sup>

In an attempt to protect labourers working in fisheries sector from human rights violations, MMAF has enacted Minister of Marine Affairs and Fisheries Regulation Number 35/PERMEN-KP/2015 concerning System and Certification of Human Rights on Fisheries Business. This regulation requires business people in fisheries industry to respect and implement human rights values.<sup>286</sup> One prominent case of human rights abuse was found in Benjina Case occurred in Benjina Island, Maluku, Indonesia. Associated Press reported that more than 300 workers were evacuated to Tual, Maluku after being investigated on 4 April 2015.<sup>287</sup> In 2015, a team investigating this case found that over 1,450 crew members, mostly from Myanmar and Cambodia, did not receive proper salary though they were employed more than agreed normal hours "without clean water and proper food". They were tortured and thwarted to return home. In responding to this, relevant institutions such as the Investment Coordinating Board (BKPM) and MMAF had discussion to revoke the company's business license.<sup>288</sup>

### 1.2.2 The Establishment of Fishery Courts.

---

<sup>283</sup> Indonesia, Money Laundering Law, Article 6. Sentence shall be subject to the Corporation in the event that the criminal action of Money Laundering: committed or ordered by the Corporation Control Personnel, committed in the framework of the objectives and purposes of the Corporation, committed in according with the function of perpetrator or the person who give the order; and is committed to give benefit for the Corporation.

<sup>284</sup> Indonesia, Money Laundering Law, Article 7.

<sup>285</sup> Indonesia, Money Laundering Law, Article 37.

<sup>286</sup> Indonesia, Ministerial Regulation Number 35/PERMEN-KP/2015, (see chap. I, footnote 80).

<sup>287</sup> "Over 300 Slaves Rescued from Indonesia Island After AP Investigation into Forced Labour", *Associated Press* (Jakarta), 4 April 2015. Available from <http://www.ap.org/explore/seafood-from-slaves/over-300-slaves-rescued-from-Indonesia-island-after-ap-investigation.html>.

<sup>288</sup> "BKPM to Revoke License of Benjina Firm", *The Jakarta Post* (Jakarta), 2 May 2015. Available from <http://www.thejakartapost.com/news/2015/05/02/bkpm-revoke-license-benjina-firm.html>.

In an effort to enhance prosecutorial effectiveness, the Government of Indonesia has formed fishery tribunals under Article 71(1)(2), Law Number 31/2004 as amended by Law Number 45/2009.<sup>289</sup> This establishment is an important decision to respond fishery cases based on Fisheries Law and other related laws and regulations. As initial phase, 5 (five) tribunals of fishery have been established as mandated by Fisheries Law under the district courts of North Jakarta, Medan (North Sumatra), Pontianak (west Kalimantan), Bitung (North Sulawesi) and Tual (Southeast Maluku).<sup>290</sup> As of 21 October 2014, total number of fishery courts has reached 10 (ten) locations with additional courts of Tanjung Pinang (Riau), Ranai (Riau), Ambon (Maluku), Sorong (Papua) and Merauke (Papua). The last three courts are established by Presidential Decree Number 6/2014 and are located in the eastern part of Indonesia.<sup>291</sup> The composition of those tribunal comprises of 3 judges (one career judge and two ad hoc judges).<sup>292</sup>

The establishment of fishery tribunal can be attributed to following rationales:<sup>293</sup>

1. The process of judicial in ordinary court generally takes quite long time to proceed. In the meantime, as a matter of fact cases in fisheries crimes requires faster course because of its sort of crime and proof.
2. In light of penalty, the prevailing non-fisheries laws and regulations do not cover all violations and crimes undertaken in fisheries. To some extent, this circumstance leads fisheries law violations to be punished inappropriately.
3. The capacity of ordinary courts is deemed to be a constraint to preside over the proceeding of fishery tribunals. It can be discerned from the fact that, to some degree, large number of violations in fisheries crimes have been punished with improper punishment than it should be.

It is worth noting that 2 (two) ad hoc judges can be derived from experts without law background but they have expertise and experiences in fisheries issues no matter from

---

<sup>289</sup> Indonesia, Law No. 45/2009 on Fisheries, Fisheries Law, Articles 71 (1)(2).

<sup>290</sup> Indonesia, Law No. 45/2009 on Fisheries, Fisheries Law, Articles 71 (3).

<sup>291</sup> Directorate General of Marine and Fisheries Resources (MMAF), "More 3 (three) Fishery Courts for Eastern Part of Indonesia)". Updated 21 October 2016. Available from [http://djpsdkp.kkp.go.id/arsip/c/136/TAMBAH-TIGA-PENGADILAN-PERIKANAN-UNTUK-INDONESIA-TIMUR/?category\\_id=21](http://djpsdkp.kkp.go.id/arsip/c/136/TAMBAH-TIGA-PENGADILAN-PERIKANAN-UNTUK-INDONESIA-TIMUR/?category_id=21).

<sup>292</sup> Indonesia, Law No. 31/2004 as amended by Law No.45/2009 on Fisheries, Fisheries Law, Articles of 78.

<sup>293</sup> Coral Triangle Initiative Project, *Indonesia: Coral Reef Rehabilitation and Management Program, Supplementary Document 16: Sector and Institutional Analysis* (the Philippines, 2014), p. 34.



academia or university, non-government organizations or professional organizations.<sup>294</sup> In creating effective and efficient judicial proceeding in fisheries violations, duration for handling the case from investigation until final decision is decreased to about 2.5 months. Those wrongdoers can be brought before the court in absentia to make the process faster as well.<sup>295</sup> In accordance with the data provided, there were 138 cases in 2010 and 66 cases in 2011 handled by fishery courts.<sup>296</sup>

The perpetrators were sanctioned using both administrative law and penal code. One interesting example is the verdict of Tanjung Pinang District Court Number 22/Pid.Sus-PRK/2015/PN Tpg of 2016. A Vietnamese, Le Duc Long, was found guilty for breaching fishing in EEZ of Indonesia with fine amounted to Rp 1,500,000,000 (One billion and five hundreds rupiahs). In the case the defendant unable to afford the fine, he will be imprisoned for 6 (six) months.<sup>297</sup> This ruling prompts further discussion concerning the legality of the imprisonment as such. According to Article 73(3) of LOSC, it is prohibited for imprisonment, in the absence of agreements to the contrary by the States concerned, or any other form of corporal punishment. This provision is in line with Article 102 of Law Number 31/2004 as amended by Law Number 45/2009.<sup>298</sup> Nevertheless, in the case the defendant cannot pay or decide not to pay the administrative penalty, then what other measures that can be done as ramification of his illegal conduct.

In 2015, Deputy of Task Force 115 revealed that compared to the other areas, the highest rate of violations occurred in the Aru Island, Maluku (Eastern part of Indonesia) engaging 350 vessels. 95% of those vessels employed masters and crews with incomplete documents, had more than one flag, inactivated Vessel Monitoring System (VMS) and transhipped illegally. He referred to case of Benjina in which several criminal acts occurred such as

---

<sup>294</sup> Ibid.

<sup>295</sup> Asian Development Bank, *State of Coral Triangle: Indonesia* (the Philippines, 2014). Available from <http://coraltriangleinitiative.org/sites/default/files/resources/SCTR-IN.pdf> (accessed 17 October 2016), p. 21.

<sup>296</sup> Organisation for Economic Cooperation and Development (OECD), *OECD Review of Fisheries: Policies and Summary Statistics 2013* (OECD Publishing, 2013) p. 445

<sup>297</sup> Supreme Court of Indonesia, "Verdict of District Court of Tanjung Pinang Number 22/Pid.Sus-PRK/2015/PN Tpg of 2016". Updated on 31 October". Available from <http://putusan.mahkamahagung.go.id/putusan/70f5f7d2159427455668c2f070189427>

<sup>298</sup> Indonesia, Law No. 45/2009 on Fisheries, Fisheries Law, Article 102.

forced labour, human trafficking, illegal migrant and illegal labour.<sup>299</sup> It comes from the fact that crime in fisheries cannot be addressed in isolation as it confronts the other crimes. Pursuant to Article 71 (1), fishery court has authority to investigate, hear and adjudicate criminal act in fisheries, therefore, this court will pose difficulty when handling fisheries case along with the other related case in its chain from production until marketing. This intricate problem can merely be resolved by amending fisheries law particularly the related articles on fishery court.

One possible option to resolving the problem is rendering the authority to adjudicate fishery crimes to ordinary court. However, bearing in mind past rationales when establishing fishery court including limitations faced by ordinary court as mentioned above, this option should be reconsidered further. One advantage in returning fisheries cases to ordinary court is it has authority to adjudicate all aspects of crimes. Another possible solution is strengthening the existing fishery courts with the right to process non-fisheries crimes in their internal judicial system. Again, this solution prompts another question concerning the scope of fisheries crimes in its position as *lex specialis*. The fisheries courts are also governed under fisheries law so it may create another problem if the courts have jurisdiction to adjudicate crimes other than fisheries violations.

From the latest data revealed by the Supreme Court of Indonesia, 814 fisheries cases have been submitted to the relevant courts to be adjudicated during 6 (six) years, from 2010 to 2016.<sup>300</sup> However there exist the gap between IUU fishing and fisheries crime cases reported in the media and those are brought before the justice. As claimed by Gilles Blanchi, Chief Technical Advisor European Union-United Nations Development Program SUSTAIN, hundreds or more cases of IUU fishing have been reported by the media, but the number falls drastically when reaching the court. He further reiterated that all related institutions should cooperate and coordinate properly to make the cases appeared before the court.<sup>301</sup>

---

<sup>299</sup> “Task Force: the Highest Violation of Vessel Regulation Occurred in Maluku (Satgas: Pelanggaran Peraturan Kapal Tertinggi ada di Maluku)”, *Mongabay*, 8 June 2015. Available from <http://www.mongabay.co.id/2015/06/08/satgas-pelanggaran-peraturan-kapal-tertinggi-ada-di-maluku/>.

<sup>300</sup> Supreme Court of Indonesia, “Directory of Verdict on the Criminal Acts of Fisheries”. Updated on 31 October. Available from <http://putusan.mahkamahagung.go.id/putusan/70f5f7d2159427455668c2f070189427>

<sup>301</sup> “UNDP: Not Many Illegal Fishing Cases Appeared before the Court (Tidak Banyak Kasus Pencurian Ikan Masuk Pengadilan)”, *Tempo*, 16 June 2016. Available from

In handling cases of fisheries crimes, it is also important to take a fast and strategic measure as the crimes are dissimilar than other crimes. For instance, once an illegal fishing vessel is seized, according to Article 73B(6) the perpetrators shall be brought before the court in less than 30 (thirty) days,<sup>302</sup> which is significantly faster than handling other criminal cases.

Recognizing that coordination amongst institutions responsible for law enforcement is one of main hurdles, a project is funded by the European Union, called EU-UNDP SUSTAIN, to build the capacity of courts in Indonesia including fishery courts and to strengthen coordination amongst law enforcement personnel. The project's term is five years with total amount of EUR 10 million fund. Internally, the Supreme Court of Indonesia takes an initiative to convene trainings for fishery judges designated in the district courts and appellate court in collaboration with UNDP (United Nations Development Programme) and EU.<sup>303</sup> It is convinced that training plays a key role in upgrading the capacity of fishery judges when adjudicating fisheries cases. Some important aspects such as international law and practices should be part of the training materials to avoid misjudgments and multi-interpretation in their rulings.

## **2. Legal Issues and Proposed Measures.**

### **2.1 Legal Issues.**

#### **2.1.1 Legal Frameworks.**

In general, Fisheries Law has strong imprisonment and fine in punishing individuals and corporations committing IUU fishing. However, according to Gregory Rose, relevant domestic laws and regulations under MMAF do not address clearly transnational criminal activities in fisheries.<sup>304</sup> In Law Number 31/2004 as amended by Law No. 45/2009 on Fisheries, criminal act is divided into crime and violation.<sup>305</sup> For those committing crime will be treated as criminals with minimum 4 years imprisonment and heavy fine. For example, minimum 5 years imprisonment and maximum IDR 2 (two) billions shall be imposed for

---

<https://nasional.tempo.co/read/news/2016/04/19/206763809/undp-tidak-banyak-kasus-pencurian-ikan-masuk-pengadilan>.

<sup>302</sup> Indonesia, Law No. 45/2009 on Fisheries, Fisheries Law, Article 73B(6).

<sup>303</sup> EU-UNDP Sustain, "Multi-Government Agencies Work to Fight Illegal Fishing". Updated 31 October 2016. Available from <http://undp.syndicate73.net/site/blog/read/13/10/over>.

<sup>304</sup> Rose, "Combating Transnational Environmental Crime", (see chap. II, footnote 162), p. 104.

<sup>305</sup> Indonesia, Law No. 31/2004 as amended by Law No.45/2009 on Fisheries, Fisheries Law, Article 103.

those practicing unsustainable fishing gears.<sup>306</sup> If it falls under the category of violation, they will be imposed maximum 2 (two) years imprisonment and/or less amount of fine than under the category of crime. In respect of law enforcement in EEZ, imprisonment will not be not imposed, except bilateral agreement is concluded between Indonesia and relevant state.<sup>307</sup>

Moreover, in the Fisheries Law, some provisions curbing IUU fishing are found extensively such as the prohibition of unsustainable fishing gears stipulated in Article 9.<sup>308</sup> Licensing system comprising License for Fishing (SIPI) and License for Fish Transporting Vessel (SIKPI) is mandatory with the exception for small-scale fishermen.<sup>309</sup> It has provided “no flag of hopping” rule as stated in Article 63(3).<sup>310</sup> As main focus of the Ministry of Marine Affairs and Fisheries’ policy in addressing IUU fishing, more stringent measure is applied through the authority for investigator and/or fisheries inspector to undertake distinctive measure by burning and/or sinking foreign fishing vessel based on sufficient preliminary evidence.<sup>311</sup> The authority to investigate is devoted to Fisheries Civil Servant Investigator, Navy Investigator and/or Police Investigator.<sup>312</sup>

While Fisheries Law covers mainly fisheries aspect, Law Number 32/2014 governs any issues related to marine affairs. In this law, issue of IUU fishing and fisheries crimes are not addressed explicitly. Nevertheless, both central and local governments along with respective authority shall undertake marine management measures to the best extent for the people’s prosperity through the utilization of marine resources by adopting blue economy principle. This utilization encompasses, among others, coastal and small islands resources as well as fisheries sector.<sup>313</sup> People’s prosperity consideration in this regulation is in line with the principle stated in Article 33(3) of the 1945 Constitution.

---

<sup>306</sup> Ibid, Article 85.

<sup>307</sup> Ibid, Article 102.

<sup>308</sup> Ibid, Article 9.

<sup>309</sup> Ibid, Articles 27 and 28.

<sup>310</sup> Ibid, Article 63(3).

<sup>311</sup> Ibid, Article 69(4).

<sup>312</sup> Ibid, Articles 73.

<sup>313</sup> Ibid, Article 14.

The authority of provincial government is further governed in Law Number 23/2014 concerning Local Government. Provincial government has responsibility to combat IUU fishing and fisheries crimes as it occupies rights, among others, to explore, exploit, conserve and management of ocean resources other than oil and gas from baseline to 12 nm. In terms of marine security and national sovereignty, province along with national administrations should share the responsibility.<sup>314</sup> Province has right to approve Fisheries Business License (SIUP) for fishing vessels between 5-30 gross tons (GT) while MMAF assumes responsibility for issuing SIUP under 30 GT engaging foreign capital and/or foreign fishermen and SIUP above 30 GT.<sup>315</sup>

The link between both IUU fishing and transnational organized crime emerged firstly during the 9<sup>th</sup> meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the sea (UNICPOLOS) and at the Conference of Parties (COP) to the UNCTOC in 2008.<sup>316</sup> Those meetings did not reach agreement on the issue and further research was necessary.<sup>317</sup> Currently, there are some important contributions in analysing the correlation between IUU fishing and transnational organized crime. The Global Initiative against Transnational Organized Crime took a view from environmental crime. It recognizes that most of IUU fishing constitutes a breach of some laws and, therefore, it could be classified as an environmental crime. In respect of its “transnational and highly organized nature”, the illicit activity is under the category of transnational organized crime.<sup>318</sup>

However, the said inclusion is challenged by Mary Ann. She conceives that the categorization of IUU fishing as environmental crime is not collectively and clearly stated in international law unlike illicit logging, illicit wildlife trafficking, illegal trafficking of poisonous waste. She suggests further that it is necessary to conduct a deeper research to address the

---

<sup>314</sup> Indonesia, Law No. 23/2014 on Local Government, Local Government Law, Article 27.

<sup>315</sup> Ibid, Annex on the Separation of Authority on Marine and Fisheries.

<sup>316</sup> United Nations, “Conference of Parties to the United Nations Convention Against Transnational Organized Crime, Report of the Conference of Parties to the United Nations Convention Against Transnational Organized Crime on its Fourth Session,” Vienna, October 8-17, 2008. CTOC/COP/2008/174, July 25, 2008, paragraph 71 and 73 cited by Palma-Robles, Mary Ann. “Fisheries Crime: Bridging the Conceptual Gap and Practical Response.” *Centre for International Maritime Security*, July 30, 2014, <<http://cimsec.org/fisheries-crime-bridging-conceptual-gap-practicalresponse/12338>>.

<sup>317</sup> Palma, Tsamenyi and Edeson, *Promoting Sustainable Fisheries*, (see chap. I, footnote 4), p. 262.

<sup>318</sup> Phelps Bondaroff, Tuesday Reitano and Wietse van der Werf, “the Illegal Fishing and Organized Crime Nexus”, (2015) *the Global Initiative against Transnational Organized Crime and the Black Fish* 1-83, 87.

connection between “fisheries and environmental law and transnational organized crime”.<sup>319</sup> Her subsequent perspective regarding the issue is relevant to this research to generate some notions, that is, the measures to fortify national laws and regulations in overcoming the matter. It can encompass efforts such as defining sorts of activity that are categorized as fisheries crime, incorporating clauses pertaining to illegal acts as part of fisheries laws and regulations, and/or revising relevant laws and regulations having connection with crime to link with fisheries legislations, and, therefore, link it “as predicate offence to money laundering”.<sup>320</sup>

The connection between criminal acts in marine and fisheries sector as predicate offence<sup>321</sup> to money laundering is provided under domestic legal framework of Indonesia through the adoption of Law number 8/2010 concerning Countermeasure and Eradication of Money Laundering. Before the adoption of this latest Money Laundering Law, Indonesia has enacted Law Number 15/2002 concerning the Crime of Money Laundering which then was amended by Law Number 25/2003. After Indonesia ratified Palermo Convention on 15 December 2000, Indonesia Government adopted Law Number 8/2010 as a replacement of Law Number 15/2002 amended by Law Number 25/2003 incorporating related provisions of Palermo Convention.<sup>322</sup>

Article 2 of Law Number 8/2010 has connected money laundering with assets acquired from various criminal acts including marine and fishery or other criminal actions of which is treated with the imprisonment for 4 (four) years or more”.<sup>323</sup> Criminal acts listed in Article 2 of Law Number 8/2009 are intended to conform Article 6 (2)(b) of the Palermo Convention which reads:<sup>324</sup>

Each State Party shall include as predicate offences all serious crime as defined in article 2 of this Convention and the offences established in accordance with articles 5, 8 and 23 of this Convention. In

---

<sup>319</sup> Mary Ann Palma, “Fisheries Crime: Bridging the Conceptual Gap and Practical Response”, (2014) *Centre for International Maritime Security* 1-7, 3. <<http://cimsec.org/fisheries-crime-bridging-conceptual-gap-practicalresponse/12338>>.

<sup>320</sup> Ibid.

<sup>321</sup> Article 2 of UNCTOC. “Predicate offence” shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 6 of this Convention.

<sup>322</sup> Indonesia, Law Number 5/2009 concerning the Ratification of United Nations Convention against Transnational Organized Crime.

<sup>323</sup> Ibid, Article 2.

<sup>324</sup> Article 6 paragraph 2(b) of UNCTOC.

the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with organized criminal groups.

Even though the application of this provision particularly money laundering in marine and fisheries needs to be tested further, the connection may pave the way as a landmark in combatting fisheries crimes within the milieu of transnational crime.

As asserted by Mary Ann, organized crimes in most countries merely involve predicate offences of drug trafficking, trafficking in people, weapons smuggling, goods smuggling, piracy, armed robbery and terrorism and occasionally illegal logging. She claimed that the Philippines is the only state that has adopted fisheries breach as predicate offences for transnational crimes. In its Anti-money laundering regulation of Republic Act 10365 amended by Republic Act 9160, it is possible for related authorities of the Philippines to freeze, seize, recover money from the proceeds of crime, cooperate with other countries, create financial intelligent units, require customer identification, keep the record and report suspicious transactions. By possessing those authorities, it is possible to trace the proceeds of crimes of fisheries in the Philippines.<sup>325</sup> With the adoption of Law Number 8/2010, Indonesia can apply the same measures as the Philippines in addressing fisheries crimes.

As supplementary to the domestic legal framework information, the following is the list of laws having connection with marine resources management compiled from various sources.<sup>326</sup>

**Table 2: List of Laws Affecting Marine Resources Management with Updated Information**

No	Regulations	Subject	Applicable for:		
			Mangrove	Seagrass	Coral Reef
<b>I. National Level</b>					
<b>A. Ocean Jurisdiction Claims</b>					
1.	Law No. 6/1996	Indonesian Waters	+	+	+
2.	Law No. 5/1983	Indonesian Exclusive	-	-	-

<sup>325</sup> Palma-Robles, “Tightening the Net”, (see chap. II, footnote 22) p. 164.

<sup>326</sup> Coral Triangle Initiative Project, *Indonesia: Coral Reef Rehabilitation and Management Program*, (see chap. III, footnote 293), p. 11. The information taken from the said document has been updated by referring to relevant laws and regulations.

		Economic Zone			
3.	Law No. 1/1973 Indonesian Continental Shelf	Indonesian Continental Shelf	+	+	+
<b>B. Ocean Resources and Activities on the Sea</b>					
4.	Law No. 4/2009	Minerals and Coal Mining	+	+	+
5.	Law No. 17/2008	Shipping	-	-	+
<b>C. Terrestrial Spatial and General Planning Laws</b>					
6.	Law No. 26/2007	Spatial Use Management	+	+	+
7.	Law No. 10/2009	Tourism	+	+	+
<b>D. Coastal and Marine Resources Management</b>					
8.	Law No. 45/2009 as the amendment of Law No 31/2004	Fisheries	+	+	+
9.	Law No. 1/2014	The amendment of Law No. 27/2007 concerning Coastal and Small Islands Management	+	+	+
10.	Law No. 18/2013	The Prevention and Elimination of Forestry Destruction	+	+	+
11.	Law No. 16/1992	Quarantine of Animal, Fish, and Plant	+	+	+
12.	Law No. 32/2014	Marine			
<b>E. General Legislation of Environmental Management</b>					
13.	Law No. 32/2009	Environmental Protection and Management	+	+	+
14.	Law No. 5/1990	Conservation of Biological	+	+	+



		Resources and Their Ecosystems			
<b>F. Legislation of Decentralization</b>					
15.	Law No. 9/2015	The Second Amendment of Law No. 23/2014 concerning Regional Government	+	+	+
16.	Law No. 33/2004	Financial Balancing between Central and Regional Government	+	+	+
<b>II. International Level</b>					
17.	Law No. 5/1994	Ratification of United Nations Convention on Biological Diversity	+	+	+
18.	Law No. 17/1985	Ratification of United Nations Convention on the Law of the Sea	+	+	+

### 2.1.2 Challenges.

The nexus between IUU fishing and TOC is an interesting subject since there exist conflicting views pertaining to this matter amongst countries and it needs further clarification such as the discussion about the whole terms of IUU fishing and transnational organized crime.<sup>327</sup> One important discussion on the issue is no standardization of punishment mechanism for breaching fisheries regulations. Countries are different in perceiving and imposing fisheries violation in terms of sanction. Some encompass them as criminals but others charge them with the administrative penalty or both.<sup>328</sup> For the case of Indonesia, Law number 31/2004

<sup>327</sup> Palma, Tsamenyi and Edeson, *Promoting Sustainable Fisheries*, (see chap. I, footnote 4), pp. 260-263.

<sup>328</sup> *Ibid*, p. 262.

as amended by Law Number 45/2009 concerning Fisheries provides both administrative and criminal sanctions for IUU fishing perpetrators.<sup>329</sup>

It is important to note that when conferring the connection between domestic legal frameworks and international legal instrument concerning IUU fishing and TOC, main reference is Palermo Convention as the only legal definition of TOC is provided in Article 2 of the Convention which reads “Organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”. Serious crime is further defined as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.<sup>330</sup> It is conceived as “transnational in nature” if:<sup>331</sup>

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.

The definitions of “organized criminal group” and “serious crime” as well as conditions for “transnational in nature” constitute the most important reference of TOC. Anastasia Telesetsky highlighted that there are two sorts of crime in Article 2 of UNCTOC. Initially, particular transnational crimes encompassing “organized criminal group” and next, “serious crime” encompassing “organized criminal group”. She was of the view that IUU fishing activities involving minimum three individuals would be regarded as “organized criminal group” if it is referred to the Convention.<sup>332</sup>

---

<sup>329</sup> Indonesia, Law Number 45/2009 as the amendment of Law Number 31/2004 concerning Fisheries, particularly in the chapter of sanctions.

<sup>330</sup> Article 2 of the United Nations Convention against Transnational Organized Crime.

<sup>331</sup> Article 3 of the United Nations Convention against Transnational Organized Crime.

<sup>332</sup> Telesetsky, “Laundering Fish in the Global Undercurrents”, (see chap. II, footnote 29), p. 966.

With regard to international perspective for crimes to be organized crime, European Union sets out six characteristics, in which at least four of numbers 1, 3, 5 and 11 must present, namely: 1) Collaboration of more than 2 people; 2) Each with own appointed tasks; 3) For a prolonged or indefinite period of time (refers to the stability and (potential) durability); 4) Using some form of discipline and control; 5) Suspected of the commission of serious criminal offences; 6) Operating at an international level; 7) Using violence or other means suitable for intimidation; 8) Using commercial or businesslike structures; 9) Engaged in money laundering; 10) Exerting influence on politics, the media, public administration, judicial authorities or the economy; 11) Determined by the pursuit of profit and/or power.

<sup>333</sup> If IUU fishing and fisheries crimes need to conform those minimum (4) four characteristics, it can be asserted that those may fall under the category of organized crime.

In assessing Indonesia's effort to include IUU fishing and fisheries crime as TOC, there are several aspects that necessary to take a look. Following some categories under Palermo Convention. There are 3 main factors, those are, organized crime, serious crime and transnational in nature. Obviously, IUU fishing and fisheries crime can only be executed by more than three or more persons as these activities may involve big business. IUU fishing activity is also transnational in nature as persons committing this action will be border-crossing in its achieving their goals and obviously causing depredation to the other countries. In Indonesia, the IUU fishing is undergone also by vessels flying foreign flags. However, to conform the category of organized crime, there should be aspect of "serious crime" in that regard.

To some extent, "serious crime" definition creates divergent responses from countries. This distinction creates reluctance for several countries to include IUU fishing as TOC under Palermo Convention. This happens as those countries view that IUU fishing shall be treated under fisheries management perspective. One very instance is Norway policy. In the inaugural fisheries crime symposium in 2015, the most underlined view came from the representative of Norwegian Ministry of Trade, Industry and Fisheries. He reaffirmed Norway's commitment to fight against fisheries crimes and treat illegal fishing as a TOC.

---

<sup>333</sup> Tanja Fröhlich, *Final Report: Organised Environmental Crime in the EU Member States*, (2003) p. 2.

Norway promoted two approaches: fighting against IUU fishing with administrative sanctions and combatting fisheries crimes with criminal sanctions.<sup>334</sup> From this perspective, there is a clear distinction between IUU fishing and fisheries crimes in terms of prevailing legal and policy instruments leading to the imposition of sanctions. In this sense, IUU fishing is not deemed as a crime and therefore it should be addressed under civil law. However, when it comes into fisheries crimes, criminal law shall be applied to combat the unlawful activities.

Another example is South Africa. In its regulation, breaching most of the provisions of MLRA will be imposed a criminal offence of and a fine penalty of maximum 2 (two) years imprisonment and not more than ZAR 2 million, respectively. Some violations in fisheries such as “prohibited gear, interference with and storage of gear and the use of driftnet” are treated under administrative law, no imprisonment.<sup>335</sup> Seemingly, South Africa Government has different approach in terms of legal framework in addressing IUU fishing and probably fisheries crimes.

As comparison, within the context of Indonesia’s legal instrument, as previously explained, Fisheries Law has provided sanctions both in penalty of fine and imprisonment depending on which category, either violation or crime. Nonetheless, most of unlawful acts are considered as crimes with minimum 4 (four) years imprisonment and severe fine. This 4 years imprisonment complies with the definition of “serious crime” of Palermo Convention. Money Laundering Law has also provided the possibility to trace, seize and other relevant measures to bring before the court any crimes and violations as predicate offence from marine and fisheries activities.

From above elaboration, it can be drawn some challenges in the future to come. **First of all**, perceptions, practices, approaches and domestic legal system vary amongst states in observing and addressing IUU fishing and fisheries crimes. The division between schools of thought of fisheries management and crimes in approaching those activities still in existence

---

<sup>334</sup> Stop Illegal Fishing and PescaDOLUS, “Record of the First International Symposium on Fish Crime”, (Oslo: the Norwegian Ministry of Trade, Industry and Fishing 2016) p. 6.

<sup>335</sup> Coning and Witbooi, “Towards a New “Fisheries Crime”, (see chap. II, footnote 63) p. 211.

among countries. It is also worth noting that unregulated fishing for some countries is not regarded as a crime since fishing in areas or fish stocks for which there are no applicable conservation or management measures does not constitute to a breach of law. Although this is a basic concept, the distinction should not undermine current measures in reviving depleted fish stocks, combatting crimes occurred along value chain of fisheries and addressing unsustainable practices to global marine ecosystem. In its domestic system, Norway inclines to make separation between IUU fishing and fisheries crimes in terms of the sanction. On the other hand, Indonesia is in the position to combat both IUU fishing and fisheries crimes using administrative and imprisonment sanctions.

**Secondly**, even though relevant domestic laws and regulations particularly fisheries law and anti-money laundering laws have complied with the provisions of UNCTOC for IUU fishing to be TOC, there are some loopholes to fill in the law to be addressed necessarily. In Law Number 45/2009 as the amendment of Law Number 31/2004 concerning Fisheries and Law Number 32/2014 concerning Marine Affairs, there is no existing definition of IUU fishing, particularly in the Article 1 of said laws.<sup>336</sup> Moreover, although elements of fisheries crimes are also regulated in the fisheries law, the connection between the crimes and transnational organized crime is not provided.

**Thirdly**, international community has various terms in overcoming fisheries poaching even though the goal is indifferent. The most familiar terms would not be IUU fishing per se, but it could refer to transnational organized fisheries crimes, fisheries-associated crimes and fisheries crimes. This dissimilarity emerged due to the lack of an agreed definition in an international legally binding agreement that could have been referred to as a common starting point. The other terms of transnational organized crime, fisheries-related crimes and fisheries crimes were introduced as a breakthrough to overcome depleted fishery resources. Those three terms share the same notion from the fact that fisheries poaching encompasses the other transnational crimes. However, those terms leave an unanswered question regarding the most correct term to use.

---

<sup>336</sup> Indonesia, Law number 12/2011 concerning the Making of Laws and Regulations. In the said law, the structure of Indonesia's laws and regulations is defined. Article 1 shall be referred to definitions of terms used in the body of laws and regulations.

**Fourthly**, further loophole is that Indonesia does not provide its consent to be bound by the 1993 FAO Compliance Agreement and the 2012 Cape Town Agreement. Those agreements are of utmost importance in combatting IUU fishing and its relations to transnational organized crime. It can be comprehended since transnational organized crime practices such as drugs, weapons, and other illicit goods are commonly practiced in the high seas.<sup>337</sup> Mary Ann acknowledges that flag states can be used to probe the possible linkage between transnational organized crime and fishing whilst the goods resulted from those illegal activities can be traced and forbidden to be exported and imported.<sup>338</sup>

## **2.2 Proposed Measures.**

### **2.2.1 Domestic Strides.**

From the legal perspective, Indonesia has enacted several laws to combat IUU fishing including Law Number 31/2004 as amended by Law Number 45/2009 concerning Fisheries. The Government of Indonesia has ratified Palermo Convention on 15 December 2000 and adopted Law Number 5/2009 regarding the Ratification of United Nations Convention against Transnational Organized Crime<sup>339</sup> and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea, and Air Supplementing the United Nations Convention against Transnational Organized Crime.<sup>340</sup>

As elaborated in above-mentioned challenges, there are several measures to propose. **First of all**, while states attempts to discover the best formula in accommodating the discrepancies between fisheries management and crimes in viewing IUU fishing and fisheries crimes, it is important to highlight that both IUU fishing and fisheries crimes are regarded as having a connection with other criminal offenses and are generally

---

<sup>337</sup> Nicola Berkovic, 'Call for New Powers to Deal with Organised Crime on High Seas', *the Australian* (online), 24 April 2015, <<http://www.theaustralian.com.au/national-affairs/call-for-new-powers-to-deal-with-organised-crime-on-high-seas/story-fn59niix-1227317735345?sv=58400ab71f725add3dc0ee80f3a1a2cc>>

<sup>338</sup> Palma, Tsamenyi and Edeson, *Promoting Sustainable Fisheries*, (see chap. I, footnote 4), p. 5.

<sup>339</sup> Indonesia, Law Number 5/2009 concerning the Ratification of United Nations Convention against Transnational Organized Crime.

<sup>340</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime was ratified through Law Number 14/2009 while the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime was ratified through Law Number 15/2009.

transnational, largely organized, and can have severe adverse social, economic and environmental impacts both domestically and internationally. Moreover, fisheries crime is part of IUU fishing. Therefore, IUU fishing and fisheries crimes should be used altogether in international fora.

**Second**, in responding to the current dynamics, it is necessary for the Indonesian Government to review and amend the existing legal frameworks on fisheries, particularly Law Number 45/2009 as the amendment of Law Number 31/2000 concerning Fisheries. The said law should define IUU fishing in the article regulating the definition. It is possible also to consider providing the definition of fisheries crimes. Another option that can be taken into account is MMAF can propose a specific law or regulation concerning IUU fishing as *lex specialis* to Law on Fisheries. In the proposed law or regulation, fisheries crimes that are transnationally organized should be provisioned.

**Third**, in determining the most correct term to use, there is a silver lining to the resolution of this issue. In February 2016, the UNODC and World Wildlife Fund (WWF) co-organized an Expert Group Meeting on Fisheries Crime in Vienna. In this forum, fisheries crime is defined as a serious offense within the fisheries resource sector that takes place along the entire food products supply chains and associated value chains, extending into the trade, ownership structures and financial services sectors. Nevertheless, the “serious” term is not associated to the definition found in the UNCTOC. It is instead meant to have an extensive impact on the community.<sup>341</sup> It seems that panel of experts have agreed to offer solution by agreeing on the definition of fisheries crimes. Although this is still a working document, this consensus may pave the way for states as reference when making formulation on the possible legally binding agreement.

**Fourth**, it is important for the Government of Indonesia to consent to be bound by the 1993 FAO Compliance Agreement. In this FAO Compliance Agreement, the control of flag states is imperative in ensuring their fishing vessels “to exercise effectively its jurisdiction and control over vessels flying its flag, including fishing vessels and vessels engaged in the transshipment

---

<sup>341</sup> *Outcome of the UNODC/WWF Fisheries Crime Expert Group Meeting 2016*, Commission on Crime Prevention and Criminal Justice, 25<sup>th</sup> sess, E/CN.14/2016/CRP.2 (11 May 2016), 3.

of fish”<sup>342</sup> and “the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources”.<sup>343</sup>

It should come to Indonesia’s concern also to express its consent to the Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 by means of accession.<sup>344</sup> In its thirty-first session, Committee on Fisheries of FAO conceived that the Cape Town Agreement was projected to become a significant instrument in eliminating IUU fishing as fishing vessels of member countries, which is part of the Agreement, would be fall under the ambit of Port State Control.<sup>345</sup> As recognized by Witbooi, the 2012 Cape Town Agreement can be utilized to press the fishing vessels to abide by the rules contained in the Agreement taking into account the growing concern of “human trafficking, including severe violation of minimal working and living conditions, on board fishing vessels”.<sup>346</sup>

### **2.2.2 Enacting a Law Like, or Incorporating the Elements of, the Lacey Act.**

Indonesia needs to consider enacting a regulation like the Lacey Act Amendments of 1981. This act was adopted by the US in 1900<sup>347</sup> and has been amended several time.<sup>348</sup> This Lacey Act bans, among other things, imports, exports, transport, sell, receive, acquire, or buy any fish, wildlife or plants that are taken, possessed, transported or sold in violation of any law, treaty, regulation of the US or Indian tribal law.<sup>349</sup> It is also illegal to conduct the same measures when it happens in foreign trade and breach any law or regulation of any foreign law.<sup>350</sup> The basic idea is exercising national jurisdiction on the basis of the principle of active nationality, through the enactment of laws that will impose punishment to its nationals if

---

<sup>342</sup> See Preamble of the 1993 FAO Compliance Agreement.

<sup>343</sup> See Preamble of the 1993 FAO Compliance Agreement.

<sup>344</sup> See Article 3 of the 2012 Cape Town Agreement. It is stated that this Agreement shall remain open for signature at the Headquarters of the Organization from 11 February 2013 to 10 February 2014 and shall thereafter remain open for accession.

<sup>345</sup> Committee on Fisheries of Food and Agriculture Organization, ‘Safety at Sea in the Fisheries Sector: the Thirty-first Session’, Rome 9-13 June 2014, accessed on 15 February 2016, <http://www.fao.org/3/a-mk073e.pdf>.

<sup>346</sup> Witbooi, “Illegal, Unreported and Unregulated Fishing on the High Seas”, (see chap. I, footnote 21), p. 296.

<sup>347</sup> The United States, Lacey Act, 18 U.S.C. §§ (2012) 42–44.

<sup>348</sup> Toine Spapens, Rob White, Wim Huisman, *Environmental Crime in Transnational Context: Global Issues in Green Enforcement and Criminology*, (London: Routledge, 2016), p. 129.

<sup>349</sup> The United States, Lacey Act, 16 U.S.C. § 3372 (1900), ss (a)(2).

<sup>350</sup> The United States, Lacey Act, 16 U.S.C. § 3372 (1900), ss (a)(4).



those persons conduct IUU fishing activities, even in the case they are on board of foreign vessels.<sup>351</sup>

This Act is considered as a cornerstone of the U.S-based litigation. The objective is “to protect those species of fish and wildlife whose continued existence is presently threatened by gradually drying up the international market for endangered species, thus reducing the poaching of any such species in the country where it is found”. When Lacey introduced this Act in the beginning of twentieth century, he had a three-fold objectives when proposing this Act: (1) to permit the introduction and protection of game, song and wild birds. (2) In the prevention of “unwise introduction of foreign game and birds”. (3) to complement state laws for the fortification of game and birds.<sup>352</sup>

According to Elinor Colbourn, Assistant Chief Environmental Crimes Section of US Department of Justice, there are some advantages of Lacey Act. First, it is considered very flexible in terms of its application from administrative penalties to transgressions to offences and it is automatically applied to new laws. Second, it can be used to combat illegal and unreported fishing (if there is any requirement for reporting) undertaken in foreign states where the fisheries products are exported to the U.S. Third, it can support other countries to apply their laws and regulations by imposing the punishment to the perpetrators importing fish taken illegally elsewhere to the US.<sup>353</sup> Some countries have adopted and applied this Act-sort of law authorizing them to govern the importation of fisheries products, such as Papua New Guinea, Tonga, Marshall Islands, Nauru, Solomon Islands and Federated States of Micronesia.<sup>354</sup>

---

<sup>351</sup> William Edeson, “Tools to Address IUU Fishing: the Current Legal Situation,” in Expert Consultation on Illegal, Unreported and Unregulated Fishing Organized by the Government of Australia in Cooperation with FAO, Sydney, Australia, 15-19 May 2000, AUS:IUU/2000/8, para. 38.

<sup>352</sup> Spapens, White and Huisman, *Environmental Crime in Transnational Context*, (see chap. III, footnote 348), p. 129.

<sup>353</sup> Elinor Colbourn, “U.S Criminal Fisheries Enforcement History, Tools, Reasons”, Presentation in Chatham House, London, 13 January 2011. Available from <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Energy,%20Environment%20and%20Development/130111colbourn.pdf>.

<sup>354</sup> Diane Erceg, “Deterring IUU Fishing Through State Control Over Nationals,” in *Marine Policy*, No. 30 (2006), p. 174, cited in Mary Ann Palma, “Combating IUU Fishing: International Legal Developments”, in *Navigating Pacific Fisheries: Legal and Policy Trends in the Implementation of International Fisheries Instruments in the Western and Central Pacific Region*, Q. Hanich and M. Tsamenyi, eds, (ANCORS, University of Wollongong, 2009).

The U.S Government has employed Lacey Act in several fisheries cases, such as the United States v. Lee, et al in 1991, the United States v. Northern Victor Partnership in 1996, the United State v. McNab, et al in 2003, the United States v. Neptune Fisheries, et al in 2004, the United States v. Pego, et al in 2005, and the latest famous case, the United States v. Bengis, et al in 2004. The Government of US has paid a lot of attentions to prosecute fisheries case based on the following rationales: (1) Violations in fisheries sector are deemed to have a massive impact posing a direct peril to marine ecosystem and (2) Violations may lead to loss of significant benefits to industry and person particularly to legal fisherman.<sup>355</sup>

In June 14, 2013, the United States District Court of Southern District of New York adjudicated the U.S v. Bengis, et al case. The defendants (Arnold Bengis, Jeffrey Noll and David Bengis) were accused to engage the harvesting of illegal South Coast and West Coast rock lobsters in South Africa to be exported out to the United States. This activity breached both the U.S and South Africa domestic laws. Arnold Bengis was the Managing Director and Chairman of Hout Bay Fishing Industries operated in Cape Town South Africa. Meanwhile Jeffrey Noll and David Bengis were the presidents of the two U.S-based companies that imported and sole the fish within the U.S territory on behalf of Hout Bay. The defendants were allegedly capture and export the lobsters to the U.S. from 1987-2001. The capture and distribution of the lobsters were regulated under the MLRA of South Africa Law and the Convention on the Conservation of Marine Living Resources.<sup>356</sup>

After further investigation, the defendants were tried by both South Africa and the United States courts. In 2002, Bengis entered a plea of guilty in violation of MLRA on over-fishing of lobster of South and West Coast. Hout Bay Company paid a certain amount of fine to South Africa Government. Two fishing vessels and container content were also confiscated. Further, South Africa authorities in collaboration with the U.S Government to investigate and prosecute the defendant for violating the U.S law. Arnold Bengis and Jeffrey Noll pleaded guilty to: (i) conspiracy to violate the Lacey Act and to commit smuggling in violation of 18 U.S.C. §371; and (ii) violations of the Lacey Act, 16U.S.C. § 3372 (a)(2)(A)

---

<sup>355</sup> Colbourn, "U.S Criminal Fisheries Enforcement", (see chap. III, footnote 353).

<sup>356</sup> *United States v. Bengis*, 631 F.3d 33, (NY, 2011).

while David Bengis pleaded guilty to conspiracy. It is interesting to note that the term “fish of wildlife” as provisioned in the Lacey Act is defined to include crustaceans, such as lobsters.<sup>357</sup>

The court concluded for the defendants to pay \$29,495,800 for violating the U.S law. That amount of restitution should be reduced by the \$7,049,080 the defendants already have paid to South Africa. Therefore, in total the defendants should pay in the amount of \$22,446,720.<sup>358</sup> What can be learned from the Lacey Act along with those fisheries cases are the application of extraterritorial jurisdiction in combatting IUU fishing and the possible enforcement of various laws such as fisheries and custom regulations to address crime on fisheries.<sup>359</sup>

MMAF has always paid a particular attention to address IUU fishing and fisheries crimes. This policy comes from the vision of the President of Indonesia to prioritize maritime as his main focus in the years to come. The spirit to preserve and conserve living marine resources should be complemented with stringent measures in any aspects including legal frameworks. One good option is either enacting a law like the Lacey Act or incorporating the elements of the Act into the existing laws and regulations such as fisheries law and other environment-related laws. The Department of Justice of United States has participated in and coordinated speaking engagements in some countries like Indonesia, China, Belgium, Switzerland, Vietnam, Malaysia, and the United Kingdom to disseminate the Lacey Act.<sup>360</sup> The engagement from the U.S Government can be a good opportunity to learn more about the application of the Act including the challenges that may occur during its implementation.

It is necessary to undertake a further research concerning the possible application or adoption the elements of the Lacey Act in the domestic legal system particularly with regard

---

<sup>357</sup> UNODC, “Case Law Database: US v. Bengis and others”. Updated on 3 November 2016. Available from [https://www.unodc.org/cld/case-law-doc/wildlifecrimetype/usa/2011/us\\_v\\_bengis\\_and\\_others.html](https://www.unodc.org/cld/case-law-doc/wildlifecrimetype/usa/2011/us_v_bengis_and_others.html).

<sup>358</sup> *United States v. Bengis*, 631 F.3d 33, 35-37 (NY, 2011).

<sup>359</sup> Palma-Robles, “Tightening the Net”, (see chap. II, footnote 22) p. 164.

<sup>360</sup> The U.S Department of Justice, “History of the Law and Policy Section”, 3 November 2016. Available from <https://www.justice.gov/enrd/history-law-and-policy-section>.

to extraterritorial jurisdiction principle. There is clue that can be generated for that possible adoption as set out in Money Laundering Law. In Article 2, Law 8/2010 reads:<sup>361</sup>

“Result of the criminal action shall be the Assets acquired from the criminal actions as follows...of which is committed in the territory of the Republic of Indonesia and in the outside of the territory of the Republic of Indonesia and such criminal action is the criminal action according to the Indonesian Law”.

Article 2 is further strengthened by Article 10 stating that anyone who are in or outside of the territory of Indonesia participating to commit the attempts, assistances, or conspiracy to conduct criminal act of Money Laundering shall be subject to be sentenced with the equal sentence as set forth in Articles 3, 4, and 5.<sup>362</sup>

In those two articles, a further step is taken in addressing money laundering by punishing Indonesia nationals when the crime committing inside or outside country. The only lack is the jurisdiction to impose sanctions to Indonesia nationals in violations to domestic laws and regulations foreign countries as well as international treaties. The same measure taken by Money Laundering Law can be applied to address IUU fishing and fisheries crimes with possible extension of extraterritorial jurisdiction. If Indonesia has this type of Act, it would not only secure its natural resources but also assume its role of keeping environmental exploitation at a sustainable level.

## **PART IV CONCLUSION**

---

<sup>361</sup> Indonesia, Law No. 8/2010 on Countermeasures and Eradication of Money Laundering, Money Laundering Law, Article 2.

<sup>362</sup> Ibid, Article 10.

In conclusion, IUU fishing and fisheries crimes transnationally organized are global and national problems. This practice also leads to severe impacts on food security, sustainable development and economic. Africa and Asia Pacific are very examples of how developing countries are affected severely by IUU fishing activities. Indonesia also poses the intricate problem of IUU fishing. The efforts find its time after President Joko Widodo envisioned Indonesia as Global Maritime Fulcrum. This vision pays more attention to ocean affairs including IUU fishing.

IUU fishing is a not stand alone problem in fisheries sector. Along with this activity, some other crimes are also committed such as people smuggling, trafficking in persons, forced labour and drugs trafficking. Indonesia government has very much concern about IUU fishing elimination and fisheries crimes and echoes this matter in international fora. In domestic and international sense, Indonesia has made some breakthroughs. However, it is necessary to identify and analyze legal and policy concepts in addressing IUU fishing and fisheries crimes to find loopholes that might occur through this paper.

From the point of view of international policy, member states of United Nations have acknowledged the protuberant threat of IUU fishing and the connection between illegal fishing and transnational organised crimes by adopting UNGA resolutions. States also developed several policy instruments. In international forum, United Nations Conference on Environment and Development (1992) adopted Agenda 21. Further moral commitment was agreed by world leaders in the World Summit on Sustainable Development in Johannesburg, South Africa by the adoption of the Johannesburg Declaration and its Plan of Implementation.

The United Nations continued to maintain and secure sustainable development globally through the adoption of the 2015 Agenda for Sustainable Development. 17 goals and 169 targets were agreed for sustainable development demonstrating the determination of a new universal agenda. The goals and targets, started on 1 January 2016, are projected to be applied until 2030. The most related agenda to ocean affairs lies in Goal 14, that is,

Conserve and Sustainably Use the Oceans, Seas and Marine Resources for Sustainable Development encompassing 7 (seven) targets to achieve.

In the legal part, international legal frameworks along with challenges and the proposed measures are provided. LOSC is main umbrella for all international regulations governing ocean affairs. When fishing in the high seas, flag state has ultimate responsibility in managing and conserving marine living resources and combatting IUU fishing. In the global level, two recognized legally binding instruments concerning flag states responsibilities are the 1993 FAO Compliance Agreement and the 1995 United Nations Fish Stock Agreement. Another robust tool to address IUU fishing based on coastal state's responsibility is the PSM Agreement.

As complementation to international legal frameworks, cases on prompt release and advisor opinion are presented. Some important principles applied are Articles 73 and 292 of LOSC. In the case of detained vessel and crews which is not promptly released upon the posting of reasonable bond, flag states may bring the case before any court or tribunal as mutually agreed upon by the parties. As of 26 October 2016, a total of 25 cases have been submitted to the Tribunal. Most cases are related to prompt release (nine cases). Two cases applying those two articles are the Case of *the "Camouco" (Panama v. France)* and the *"Volga" Case (Russian Federation v. Australia)*. Legal question on the amount of bond determined by the arresting state as stated in Articles 73 and 292 of LOSC was addressed in those two cases. The aspects to assess "the reasonableness of bond or other financial security as inferred in *the "Camouco"* case complement to the adjudication of the *M/V "SAIGA"* Case.

With regard to advisory opinion of ITLOS, there are 4 (four) questions submitted by SRFC. For first question, the Tribunal stated that the flag state shall undertake necessary measure, exercise effectively its jurisdiction and control in administrative matters over its vessel and flag state has obligation to impose adequate sanctions over its fishing vessels flying its flag when committing IUU fishing. In responding second question, the Tribunal clearly made a reference to due diligence obligations from Articles 125 to 140 as well as

distinguished between due diligence obligations and result obligations. For third question, it was reiterated that when international organization has concluded a fisheries access agreement with SRFC member state, international organization bears the responsibility upon its member states. The tribunal responded the last question by stating that member states of SRFC have right to conclude agreement with the other members of SRFC to ensure the conservation and development of their shared stocks.

To make this research paper more focus in the deliberation, primarily there are 4 (four) research questions. In terms of policy, the following is the answers to the questions:

a. What is the policy framework of Indonesia to address IUU fishing and fisheries crimes? In overcoming IUU fishing and fisheries crimes, numerous policies have been taken by Indonesia Government such as sinking fishing vessels undertaking IUU fishing and establishing 2 (two) tasks force. As political document mandated by IPOA-IUU fishing, NPOA-IUU fishing can be considered as political commitment in combatting IUU fishing. During the leadership of Minister Susi, some policies have also been introduced such as moratorium of fisheries license for ex foreign fishing vessels for the vessels more than 30 gross tons in order to promote sustainable fisheries management, address IUU Fishing in Indonesia Fisheries Management Areas and increase non-tax state revenue.

As following up of moratorium policy, MMAF then reviewed fisheries license of fishing vessels constructed by foreign countries. Indonesia also applies non-transshipment policy through the enactment of Ministerial Regulation Number 57/PERMEN-KP/2014. In fisheries industry, transnational organized crimes such as trafficking in persons and slavery occur in fisheries industry of Indonesia. It becomes international community's concern as Indonesia is placed in Tier 2 according to the 2015 Report of TIP. In every province of Indonesia, cases of trafficking are found. As an effort to garner support from international community, Indonesia has committed to have a stronger bilateral, regional and multilateral cooperation, not only with states but also with organization such as INTERPOL through joint collaboration.

b. What are the gaps that exist in Indonesia's policy regarding IUU fishing and its connection with fisheries crimes transnationally organized?

There are some loopholes in above-mentioned policies implementation:

1. NPOA expires in 2016 and the transnational aspects of IUU fishing and fisheries crimes are not covered.
2. The policies of transshipment, destructive fishing gears and moratorium also spark resistance from related stakeholders such as fisheries industry and small-scale fisherman. Traditional fishermen complains their livelihoods are affected.
3. Moratorium policy is also deemed as creating the lack of supply in the market and unemployment.
4. Gap also occurs in international organizations handling IUU fishing (FAO) and fisheries crimes (UNODC) as those issues are separated based on the mandate of each organization.
5. Last loophole is 4 (four) constraints in law enforcement efforts, namely; coordination, single door policy, lack of 3 (three) abilities and corruption.

c. What are the lessons learned that can be drawn from policy measures of the United States and South Africa concerning the matter?

In above elaboration, lessons learned can be drawn from the state practices of the U.S and South Africa. The U.S and South Africa have very much concern on IUU fishing. The U.S Government has established Presidential Task Force on Combating IUU fishing and Seafood Fraud, ratified PSM Agreement and port entry and access restriction. The Magnuson-Steven Reauthorization Act and the Lacey Act can be discerned as powerful tools to combat IUU fishing. There are two lessons that can be learned from the U.S. It is important to learn that when formulating the recommendations, the Task Force involves public participation to obtain their opinions. Task force issues 15 (fifteen) recommendations.

In the case of South Africa, the strengthened cooperation has been initiated between DAFF and South Africa Police international police. A project called FishFORCE in NMMU has also been established after securing financial assistance from Norway Government.



Through this project, a law enforcement academy is devoted to provide capacity building on the issues of fisheries crimes and fisheries-related crimes in the sea. Future collaboration is possible to be extended to member countries of IORA including Indonesia.

d. What measures are necessary to eliminate IUU fishing and TOFC within the scope of domestic national policy framework?

There are some efforts that are proposed to be undertaken:

1. A stronger cooperation in the region within the framework of relevant regional organizations including ASEAN and IORA should be encouraged. However, bilateral cooperation plays an important role as well.
2. The NPOA-IUU fishing should be reviewed before it is extended to another 5 (five) years. It is a good opportunity to include vision of Indonesia as Global Maritime Fulcrum and encompass fisheries crimes transnationally organized in the document.
3. It is also important to note that communication and consultation with public may minimize the resistance from stakeholders on the policies revealed. It is much better if MMAF conducts a comprehensive study examining advantages and disadvantages. During examination, public consultation could be considered as one good option to gather concerns from public as learned from the U.S Task Force when formulating the policy. This public dialogue can minimize negative impacts arising out from the policy.
4. Next is paying attention to the different roles of FAO and UNODC. The former has mandate to address IUU fishing while the latter has duty to address crimes related to fisheries. It is imperative also for the two organizations to have a more regular meeting.
5. The other effort should be addressing 4 (four) deficiencies of law enforcement through commitment and awareness enhancement as well as utilizing multi-door approach.
6. As referred to the title of Presidential Regulation Number 115/2015, the task force established by that regulation focuses on combatting illegal fishing meaning it does not have specific task in addressing and combatting fisheries related crimes. Therefore, it is necessary for this presidential regulation to be amended by putting

transnational fisheries crimes and unregulated fishing as part of this task force's duties. The last proposal is formulating SOP and guidelines to make the implementation of Presidential Regulation Number 115/2015 in a more detail fashion.

Furthermore, from legal framework, the answers to the questions are as follows:

- a. What is the legal framework of Indonesia in addressing IUU fishing and fisheries crimes transnationally organized?

Indonesia has included provisions on natural resources on constitution. The 1945 Constitution has provided the role of state and the benefit for the Indonesia people with regard to natural resources arrangement. Under the Constitution, there are several main laws concerning IUU fishing and TOFC such as Law No. 45/2009 on Fisheries, Law No. 32/2014 on Marine Affairs and Law No. 8/2010 on Countermeasures and Eradication of Money Laundering. More technical aspects such as fishing vessel registration and licensing and the other aspects are regulated under ministerial regulations, ministerial decrees, governmental regulations and director general decrees.

One of ultimate objectives of Fisheries Law is to overcome the problems of IUU fishing. In this Law, criminal acts consist of crime and violation. The punishment for the persons committing crimes is higher than that of under the category of violation. Minimum punishment for criminal acts is 4 (four) years while for violation is maximum 2 (two) years. Some provisions to curb IUU fishing are found in this law. Meanwhile, Law Number 32/2014 does not cover issues of IUU fishing and TOFC explicitly. After ratifying Palermo Convention, Indonesia authorities agreed to adopt Money Laundering Law Number 8/2010. The connection between criminal acts in marine and fisheries and predicate offence is provided in this law. An independent institution, Financial Transaction Report and Analysis Center (PPATK), is established by Indonesia Government to prevent and eradicate the crime of money laundering

In the Fisheries Law, there is a mandate to establish fishery courts under Article 71(1)(2) of Fisheries Law as an effort to have an effective prosecution. There are 10 (ten) fishery courts across the country as of 21 October 2014. The composition of those tribunal

comprises of 3 judges (one career judge and two ad hoc judges). The courts pose difficulty when handling fisheries case along with the other related case in its chain. This intricate problem can merely be resolved by amending fisheries law. The possible option to resolve the problem is either rendering the authority to adjudicate fisheries crimes to ordinary court or strengthening the existing fishery courts with the right to process non-fisheries crimes in their internal judicial system.

b. What are the gaps that exist in Indonesia's legislation regarding IUU fishing and its connection with fisheries crime transnationally organized?

From legal aspects, there persist some loopholes:

1. The relevant domestic laws and regulations under MMAF do not address clearly transnational criminal activities in fisheries. Fisheries law also does not define IUU fishing and fisheries crimes.
2. With regard to fishery courts duties, related-crimes aspects inclusion of fisheries crime will make the courts difficult in adjudicating the crimes.
3. Furthermore, in international community, the perception in perceiving and imposing violation on fisheries regulation is different. Some countries view them as criminals while the others treat them under civil law.
4. Moreover, various terms in addressing fisheries poaching such as TOFC, fisheries-related crime and fisheries crime as the legal definition of fisheries crime is not provided in international legally binding instrument.
5. Indonesia is not a state party to the FAO Compliance Agreement and the Cape Town Agreement.

c. What are the lessons learned that can be drawn from legal measures of the U.S and South Africa concerning the matter?

Indonesia can draw some lessons from legal instruments of the U.S and South Africa. The U.S Government has evoked this Lacey Act in several cases including the foremost Bengis Case. The defendants can be prosecuted as a result of collaboration between the U.S and South Africa Governments. Authorities of South Africa have a strong commitment not only to prosecute the defendants based on its domestic regulations but also to cooperate

with the U.S Government to bring the perpetrators before the U.S court. This Act makes the implementation of extraterritorial jurisdiction and the application of custom regulation in combatting fisheries crimes possible. As inspired by the Lacey Act, some countries have adopted this kind of Act into their domestic legal system.

d. What measures are necessary to combat IUU fishing and fisheries crimes transnationally organized within the scope of domestic legal framework?

As response to those challenges, there are several proposals that can be taken into account, as follows:

1. IUU fishing and fisheries crimes should be used altogether in international fora;
2. It is necessary to review and amend the existing legal frameworks on fisheries, particularly Law Number 45/2009 concerning Fisheries. The said law should define IUU fishing. It is possible also to consider providing its connection to TOC.
3. Indonesia should provide its consent to be bound by the 1993 FAO Compliance Agreement and the 2012 Cape Town Agreement.
4. Indonesia should consider to enact a regulation like or incorporate the elements of the Lacey Act. The objective is to protect those species of fish and wildlife whose continued existence is presently threatened by gradually drying up the international market for endangered species, thus reducing the poaching of any such species in the country where it is found. From Lacey Act, lessons learned are extraterritorial jurisdiction and the possible enforcement of other laws such as custom regulations to address crime on fisheries.

Further research is necessary on the possible application or adoption the elements of the Lacey Act in the domestic legal system particularly with regard to extraterritorial jurisdiction principle. There is clue that can be generated for that possible adoption as set out in the Money Laundering Law. In the relevant articles, Indonesia authority punishes its nationals when money laundering committed inside or outside country. The only lack is the jurisdiction to impose sanctions when violating domestic laws and regulations of foreign countries and international treaties.

## BIBLIOGRAPHY

### A. Book:

1. Bondaroff, Phelps, Tuesday Reitano and Wietse van der Werf. *The Illegal Fishing and Organized Crime Nexus*. The Global Initiative against Transnational Organized Crime and the Black Fish, 2015.
2. Edeson, William B., David Freestone and Elly Gudmundsdottir, *Legislating for Sustainable Fisheries: A Guide to Implementing the FAO Compliance Agreement and 1995 UN Fish Stocks Agreement*. Washington DC: the World Bank, 2001.
3. Fröhlich, Tanja. *Final Report: Organised Environmental Crime in the EU Member States*. 2003.
4. Galland, Grantly and others. *Netting Billions: A Global Valuation of Tuna*. The PEW Charitable Trusts, 2016.
5. Harris, David. *Cases and Materials on the International Law*. London: Sweet and Maxwell, 2004.
6. Huffard, C.L. and others. *Geographic Priorities for Marine Biodiversity Conservation in Indonesia*. Jakarta: Ministry of Marine Affairs and Fisheries and Marine Protected Areas Governance Program, 2012.
7. Irianto, Hari E, and others. *Indonesia National Report to the Scientific Committee of the Indian Ocean Tuna Commission 2015*. Jakarta: Research and Development Agency of the Ministry of Marine Affairs and Fisheries of Indonesia, 2015.
8. Lungren, Robin and others. *Status and Potential Fisheries and Aquaculture in Asia and the Pacific 2006*. FAO Regional Office for Asia and the Pacific: RAP Publication, 2006/22.
9. Maguire, Jean-Jacques and others. *FAO Technical Paper: the State of World Highly Migratory, Straddling and Other High Seas Fishery Resources and Associated Species*. Rome: Information Division of FAO, 2006.
10. Palma, Mary Ann, Bill Edeson and Martin Tsamenyi. *Promoting Sustainable Fisheries: the International Legal and Policy Framework to Combat Illegal, Unreported and Unregulated Fishing*. London and Boston: Martinus Nijhoff Publishers, 2010.
11. Rose, Gregory. *Following the Proceeds of Environmental Crime: Fish, Forests and Filthy Lucre*. London and New York: Routledge, 2014.
12. Stobutzki, Ilona and others. *Overview of Indonesia's Capture Fisheries, 2013*. Australia: Australian Bureau of Agriculture and Resource Economics and Sciences, 2014.
13. Spapens, Toine, Rob White and Wim Huisman. *Environmental Crime in Transnational Context: Global Issues in Green Enforcement and Criminology*. London: Routledge, 2016.
14. Tanaka, Yoshifumi. *The International Law of the Sea*. The United Kingdom: Cambridge University Press, 2012.
15. ----- . *A Dual Approach to Ocean Governance: the Cases to Zonal and Integrated Management in the Law of the Sea*. London and New York: Routledge, 2016.
16. Tomascik and others. *The Ecology of the Indonesian Seas (Part One)*. Periplus Edition, 1997.

17. Vrancken, Patrick. *South Africa and the Law of the Sea*. London and Boston: Martinus Nijhoff Publishers, 2011.

**B. Article or chapter by individual authors in a book:**

1. Fitriani, Evi. Yudhoyono's Foreign Policy: Is Indonesia a Rising Power?. In *The Yudhoyono Presidency: Indonesia's Decade of Stability and Stagnation*, Edward Aspinal, Marcus Mietzner and Dirk Tomsa, eds. Institute of Southeast Asian Studies, 2015.
2. Butcher, John G. Becoming an Archipelagic State: the Juanda Declaration of 1957 and the 'Struggle' to Gain International Recognition of the Archipelagic Principle. In *Indonesia Beyond the Water's Edge. Managing in Archipelagic State*, R. B Cribb and Michele Ford, eds. Institute of Southeast Asia Studies, 2009.
3. Balton, David. The Compliance Agreement. In *Development in International Fisheries Law*, Helen Hey, ed. Hague: Kluwer Law International, 1999.
4. Palma, M.A. Combatting IUU Fishing: International Legal Developments. In *Navigating Pacific Fisheries: Legal and Policy Trends in the Implementation of International Fisheries Instruments in the Western and Central Pacific Region*, Q. Hanich and M. Tsamenyi, eds. ANCORS, University of Wollongong, 2009.
5. Tsamenyi, Martin, Clive Schofield and Ben Milligan. Navigation through Archipelagos. In *Freedom of Seas, Passage Rights and 1982 Law of the Sea Convention*, Myron H. Nordquist, Tommy Thong Bee and Koh John Norton More, eds. Center for Ocean Law and Policy, 2009.

**C. Publication, organization as author and publisher:**

1. Asian Development Bank. *State of Coral Triangle: Indonesia*. The Philippines, 2014.
2. Coral Triangle Initiative Project. *Indonesia: Coral Reef Rehabilitation and Management Program, Supplementary Document 16: Sector and Institutional Analysis*. The Philippines, 2014.
3. Food and Agriculture Organization. *International Plan of Action on Illegal, Unreported and Unregulated Fishing (IPOA-IUU Fishing)*. Rome, 2001.
4. Food and Agriculture Organization. *The State of World Fisheries and Aquaculture 2010*. Rome, 2010.
5. Food and Agriculture Organization. *The State of World Fisheries and Aquaculture 2012*. Rome, 2012.
6. Food and Agriculture Organization. *The State of World Fisheries and Aquaculture 2014*. Rome, 2014.
7. Food and Agriculture Organization, *Standard Operating Procedures*. FAO, 2016.
8. Food and Agriculture Organization, *World's First Illegal Fishing Treaty Now in Force*. FAO, 2016.
9. INTERPOL, "Project Scale". Updated on 15 August 2016. Available from <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Scale>.
10. INTERPOL, "Targeting Organized Crime Networks behind Illegal Fishing Focus of INTERPOL Meeting". Updated on 20 May 2016. Available from <http://www.interpol.int/News-and-media/News/2016/N2016-065>.
11. International Pole and Line Foundation. *Indonesia Underlines its Commitment to the 100% Eradication of IUU Fishing*. Indonesia, 2014.

12. International Labour Organization. *Joint Statement between Indonesia and Norway to Combat IUU Fishing, Fisheries Crimes and Other Fisheries related Crimes*. ILO, 25 December 2015.
13. Indian Ocean Rim Association. *Membership*. IORA, 2016. IORA is an international organization with 21 member states: Australia, Bangladesh, Comoros, India, Indonesia, Iran, Kenya, Madagascar, Malaysia, Mauritius, Mozambique, Oman, Seychelles, Singapore, Somalia, South Africa, Tanzania, Thailand, UEA and Yemen.
14. Indian Ocean Rim Association. *Fisheries Management*. IORA, 2016.
15. International Tribunal on the Law of the Sea. *List of Cases*. Hamburg, 2016.
16. Organisation for Economic Cooperation and Development. *OECD Review of Fisheries: Policies and Summary Statistics 2013*. OECD Publishing, 2013.
17. PescaDOLUS, "Fisheries Law Enforcement Academy Established at NMMU". Available from <http://www.pescadolus.org/fisheries-law-enforcement-academy-established-nmmu/>.
18. Sustainable Fisheries Partnership. *Indonesia Tuna Fishery Improvement Project*. Indonesia, 2016.
19. United Nations Office on Drugs and Crime. *Transnational Organized Crime in the Fishing Industry (Focus on: Trafficking in Persons, Smuggling of Migrants and Illicit Drugs Trafficking)*. Vienna, 2011.
20. United Nations Office on Drugs and Crime. *Combatting Transnational Organized Crime Committed at Sea: Issue Paper*. Vienna, 2013.
21. United Nations Environment Program. *Catching Crime: Fighting illegal fishing has led to a more sustainable industry, increasing food supplies and well-being*. UNEP, 2016.
22. United Nations Office on Drugs and Crime. *UNODC: a Brief Overview*. UNODC, 2 November 2016.

**D. Government publication with ministry or department as author and publisher:**

1. Indonesia, Ministry of Marine Affairs and Fisheries. *National Plan of Action on IUU Fishing*. Jakarta, 2012.
2. Indonesia, Ministry of Foreign Affairs of Indonesia. Statement. Available from <http://www.indonesiamission-ny.org/zymurgy/custom/statement.php?id=357#.VhTUdivCpCE>
3. Indonesia and Australia, Joint Ministerial Statement - 9th Australia-Indonesia Ministerial Forum on 12 November 2008 (media release). Available from [http://foreignminister.gov.au/releases/2008/9\\_aimf\\_statement.html](http://foreignminister.gov.au/releases/2008/9_aimf_statement.html).
4. Norway, Ministry of Trade, Industry and Fishing. *Record of the First International Symposium on Fish Crime*. Oslo, 2016.
5. Indonesia, Directorate General of Marine and Fisheries Resources. *More 3 (three) Fishery Courts for Eastern Part of Indonesia*. Jakarta, 2016.
6. Indonesia, Ministry of Foreign Affairs. *Indonesia Chairs ARF Workshop on Illegal, Unreported and Unregulated (IUU) fishing*. Jakarta, 2016.
7. Indonesia, Ministry of Foreign Affairs. *The List of International Treaty Registered in the Ministry of Foreign Affairs of Indonesia*. Jakarta, 2016.
8. Indonesia, Supreme Court. *Verdict of District Court of Tanjung Pinang Number 22/Pid.Sus-PRK/2015/PN Tpg of 2016*. Jakarta, 2016.

9. Indonesia, Supreme Court. *Directory of Verdict on the Criminal Acts of Fisheries*. Jakarta, 2016.
10. South Africa, Department of Environmental Affairs. *State of the Environment: State of South Africa's Fisheries*. Pretoria, 2012.
11. South Africa, Department of Agriculture, Forestry and Fisheries. *The Strategic Plan for the Department of Agriculture, Forestry and Fisheries 2013/14 to 2017/2018*. Pretoria, 2013.
12. South Africa, Department of Agriculture, Forestry and Fisheries. *Vision, Mission and Values*. South Africa, 2016.
13. The United States, Department of State. *Trafficking in Persons Report 2015*. Washington, 2015.
14. The United States, National Oceanic and Atmospheric Administration (NOAA Fisheries). *Illegal, Unreported and Unregulated Fishing*. The United States, 2016.
15. The United States, Department of State. *Illegal, Unreported and Unregulated Fishing*. The United States, 2016.
16. The United States, Presidential Task Force on Combating IUU Fishing and Seafood Fraud. *Action Plan for Implementing the Task Force Recommendations*. The United States, 2014.
17. The United States, National Oceanic and Atmospheric Administration (NOAA). *Magnuson-Stevens Reauthorization Act*. The United States, 2016.
18. The United States, NOAA Fisheries, *Improving International Fisheries Management: February 2015 Report to Congress*. The United States, 2015.

**E. Article on a website:**

1. Committee on Fisheries of Food and Agriculture Organization. Safety at Sea in the Fisheries Sector: the Thirty-first Session, Rome 9-13 June 2014, 15 February 2016. Available from <http://www.fao.org/3/a-mk073e.pdf>.
2. Conservation and Community Investment Forum. Indonesia Country Report Assessment of the Enabling Conditions for Rights-Based Management of Fisheries and Coastal Marine Resources, 2013. Available from [http://www.trustforconservationinnovation.org/sponsored/inc/CCIF\\_Indonesia\\_web.pdf](http://www.trustforconservationinnovation.org/sponsored/inc/CCIF_Indonesia_web.pdf).
3. Don Liddick. Illegal Fishing and Organized Crime: A Threat to Maritime Security?, 9 December 2014. Available from <http://piracy-studies.org/illegal-fishing-and-organized-crime-a-new-maritime-security-threat/>.
4. Nelson Mandela University, "NMMU in R50M Deal with Norway", 6 June 2016. Available from <https://news.nmmu.ac.za/News/NMMU-in-R50m-deal-with-Norway>. PescaDOLUS is the international research and capacity-building partnership on fisheries crime between South Africa and Norway.
5. EU-UNDP Sustain. Multi-Government Agencies Work to Fight Illegal Fishing, 31 October 2016. Available from <http://undp.syndicate73.net/site/blog/read/13/10/over>.
6. The U.S Department of Justice. History of the Law and Policy Section, 3 November 2016. Available from <https://www.justice.gov/enrd/history-law-and-policy-section>.



7. UNODC. Case Law Database: US v. Bengis and others, 3 November 2016. Available from [https://www.unodc.org/cld/case-law-doc/wildlifecrimetype/usa/2011/us v bengis and others.html](https://www.unodc.org/cld/case-law-doc/wildlifecrimetype/usa/2011/us_v_bengis_and_others.html).

**F. Article in a periodical;**

1. Agnew, D.J and others. Estimation of the Cost of Illegal Fishing in West Africa. *The Marine Resource Assessment Group*, (2010).
2. Ariadno, Melda Kamil. Sustainable Fisheries in Southeast Asia. *Indonesia Law Review*, vol. 3 (2011).
3. Baird, Rachel. Illegal, Unreported and Unregulated Fishing: An Analysis of the Legal, Economic and Historical Factors Relevant to Its Development and Persistence. *Melbourne Journal of International Law*, vol.5 (2004).
4. Coning, Eva d. and Emma Witbooi. Towards a New “Fisheries Crime” Paradigm: South Africa as an Illustrative Example. *Marine Policy*, vol. 60 (2016).
5. Fallon Liza D. and Leorne K. Kriwoken. International Influence of An Australian Non-Government Organization in the Protection of Patagonian Toothfish. *Ocean Development and International Law*, Vol. 35, No. 3 (2004).
6. Katsumata, Hiro. Reconstruction of Diplomatic Norms in Southeast Asia: the Case for Strict Adherence to the “ASEAN Way”. *Contemporary Southeast Asia*, vol. 25 (2003).
7. Miller, Denzil G.M. and others. An Action Framework to Address Illegal, Unreported and Unregulated (IUU) Fishing. *Australian Journal of Maritime and Ocean Affairs*, vol. 4(2) (2014).
8. Palma-Robles, Mary Ann. Tightening the Net: the Legal Link between Illegal, Unreported and Unregulated Fishing and Transnational Organized Crime under International Law. *Ocean Yearbook*, vol. 29 (2015).
9. Telesetsky, Anastasia. Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing and Transnational Organized Crime. *Ecology Law Quarterly*, vol. 41(4) (2015).
10. Ventura, Victor Alencar Mayer Feitos. Tackling Illegal, Unregulated and Unreported Fishing: the ITLOS Advisory Opinion on Flag State Responsibility for IUU Fishing and the Principle of Due Diligence. *Brazilian Journal of International Law*, vol. 12, No. 1, 2015.
11. Witbooi, Emma. Illegal, Unreported and Unregulated Fishing on the High Seas: The Port State Measures Agreement in Context. *The International Journal of Marine and Coastal Law*, vol. 29, (2014).

**G. Legislations;**

1. Constitution of the Republic of Indonesia of 1945 (Indonesia)
2. Lacey Act of 1900 (the United States)
3. Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (the United States)
4. Law Number 5/2009 concerning the Ratification of United Nations Convention against Transnational Organized Crime (Indonesia)
5. Law Number 45/2009 as the amendment of Law Number 31/2004 concerning Fisheries (Indonesia)

6. Law Number 8/2010 concerning Countermeasure and Eradication of Money Laundering (Indonesia)
7. Law Number 12/2011 concerning the Making of Laws and Regulations (Indonesia)
8. Law No. 32/2014 on Marine Affairs, Marine Affairs Law (Indonesia)
9. Law No. 23/2014 on Local Government, Local Government Law, Annex on the Separation of Authority on Marine and Fisheries (Indonesia)
10. National Environmental Management Act 107 of 1998 (South Africa)
11. Protected Areas Act 57 of 2003 (South Africa)
12. Marine Living Resources Amendment Act 5 of 2014 (South Africa)
13. Presidential Decree Number 39 Year 1980 concerning Trawl Net Elimination (Indonesia)
14. Ministerial Regulation Number 57/PERMEN-KP/2014 concerning Second Amendment to Ministerial Regulation Number PER.30/MEN/2012 on Business of Capture Fisheries in Indonesia Fisheries Management Areas (Indonesia)
15. Ministerial of Marine Affairs and Fisheries Number 56/PERMEN-KP/2014 concerning Moratorium of Fisheries License for Ex Foreign Fishing Vessels in Indonesia Fisheries Management Area (Indonesia)
16. Presidential Regulation Number 155/2015 concerning the Task Force to Combat Illegal Fishing, (Indonesia)
17. Ministerial Regulation Number 2/PERMEN-KP/2015 concerning the Prohibition of Trawls and Seine Nets in Indonesia Fisheries Management Areas (Indonesia)
18. Ministerial Regulation Number 35/PERMEN-KP/2015 concerning System and Certification of Human Rights on Fisheries Business (Indonesia)
19. Ministerial Regulation Number 1/PERMEN-KP/2015 concerning Catching Lobster and Crabs (Indonesia)
20. Ministerial of Marine Affairs and Fisheries Number 10/PERMEN-KP/2015 Ministerial Regulation Number 10/PERMEN-KP/2015 as Amendment to Ministerial Regulation Number 56/PERMEN-KP/2014 concerning Moratorium of Fisheries License for Ex Foreign Fishing Vessels in Indonesia Fisheries Management Area (Indonesia)
21. Presidential Regulation Number 43/2016 concerning Ratification of Agreement on Port State Measure to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Indonesia).

#### **H. Legally and Non-Legally Binding International Instruments**

1. Convention on the Territorial Sea and Contiguous Zone, opened for signature 29 April 1958, 516 UNTS 205 (entered into force 10 September 1964).
2. Convention on the Continental Shelf, opened for signature 29 April 1958, 499 UNTS 311 (entered into force 10 June 1964).
3. Convention on the High Seas, opened for signature 29 April 1958, 450 UNTS 11 (entered into force 30 September 1962).
4. Convention on Fishing and Conservation of Living Resources of the High Seas, opened for signature 29 April 1958, 559 UNTS 285 (entered into force 20 March 1966)
5. Law of the Sea Convention (1982), vol. 2225 No. 209, (opened for signature 10 December 1982, entered into force 16 November 1994).

6. United Nations Convention against Transnational Organized Crime, opened for signature 12 to 15 December 2000, (entered into force 29 September 2003).
7. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of The Sea of 10 December 1982 Relating to The Conservation And Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, opened for signature on 4 December 1995, 2167 UNTS 3 (entered into force 11 November 2001)
8. Agreement on Port State Measure to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, (opened for signature 22 November 2009 until 21 November 2010, entered into force 5 July 2016).
9. The 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, (adopted on 24 November 1993 and entered into force on 24 April 2003).
10. The 2012 Cape Town Agreement on the Implementation Agreement of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977, open for signature at the Headquarters of the Organization from 11 February 2013 to 10 February 2014 and shall thereafter remain open for accession. Not yet in force.
11. Food and Agriculture Organization, FAO Code of Conduct For Responsible Fisheries (adopted in 1995) <http://www.fao.org/docrep/005/v9878e/v9878e00.htm>
12. Food and Agriculture Organization, International Plan of Action to Prevent, Deter, Eliminate Illegal, Unreported and Unregulated Fishing (adopted on 23 June 2001 at the 120<sup>th</sup> Session of the FAO Council) <http://www.fao.org/docrep/003/y1224e/y1224e00.htm>
13. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 12 to 15 December 2000, 2237 UNTS 139 (entered into force 25 December 2003)
14. Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, opened for signature 12 to 15 December 2000, 2241 UNTS 507 (entered into force 28 January 2004).
15. United Nations General Assembly, General Assembly Resolution 68, 66<sup>th</sup> sess, UN Doc A/RES/66/68 (28 March 2012)
16. United Nations Convention against Transnational Organized Crime, opened for signature 12 to 15 December 2000, 2225 UNTS 209 (entered into force 29 September 2003)
17. United Nations Office on Drugs and Crime Division for Treaty Affairs, Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime And The Protocols Thereto (United Nations Publication, 2004).

#### **I. Cases**

1. *Camouco (Panama v France), Prompt Release, (Judgment)* [2000] ITLOS Reports.
2. *M/V "SAIGA" (Saint Vincent and the Grenadines v. Guinea), Prompt Release, (Judgment)*, [1997] ITLOS Reports.

3. Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, (*Advisory Opinion*), [2015], ITLOS Reports.

**J. Other UN Documents**

1. Commission on Crime Prevention and Criminal Justice, the United Nations Office on Drugs and Crime 2016, Outcome of the UNODC/WWF Fisheries Crime Expert Group Meeting 2016, Vienna.
2. Food and Agriculture Organization, Johannesburg Plan of Action, Johannesburg, 26 August-4 September 2002.
3. Food and Agriculture Organization of the United Nations document C200/INF/25, Appendix I.
4. General Assembly Resolution A/RES/66/68, adopted on 6 December 2011.
5. General Assembly Resolution A/RES/67/79, adopted on 11 December 2012.
6. General Assembly Resolution A/RES/68/71, adopted on 9 December 2013.
7. General Assembly Resolution 70/1, Transforming Our World: the Agenda for Sustainable Development, adopted on 21 October 2015.
8. Transforming Our World: the Agenda for Sustainable Development, General Assembly Resolution 70/1, UNGAOR, 17th Sess, Agenda Item 15 and 116, UN Doc A/RES/70/1 (21 October 2015), para 17.45. Hereinafter referred to as Agenda 21.
9. United Nations, Resumed Review Conference on the Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York: United Nations Department of Public Information, 2010.
10. United Nations, Transforming Our World: the Agenda for Sustainable Development Hereinafter referred to as Agenda 21, New York, 2015.
11. United Nations, Report of World Summit on Sustainable Development (WSSD), Johannesburg, 26 August-4 September 2002.
12. United Nations 2016, Report of the UN Secretary General submitted to the resumed Review Conference on the Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York.
13. United Nations 2016, Report of the resumed Review Conference on the Agreement for the Implementation of the Provisions of the UN Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, New York.
14. United Nations Environmental Program document UNEP/CBD/COP/5/23, annex III.
15. United Nations, "Conference of Parties to the United Nations Convention Against Transnational Organized Crime, Report of the Conference of Parties to the United Nations Convention Against Transnational Organized Crime on its Fourth Session," Vienna, October 8-17, 2008. CTOC/COP/2008/174, July 25, 2008.
16. United Nations Office on Drugs and Crime 2016, Outcome of the UNODC/WWF Fisheries Crime Expert Group Meeting 2016, Commission on Crime Prevention and Criminal Justice, 25<sup>th</sup> sess, E/CN/14/2016/CRP.

## K. Newspaper Article

1. "New Indonesian Maritime Affairs Minister Declares War Against Illegal Fishing", *Antara News* (Jakarta), 31 October 2014. Available from <https://www.antaraneews.com/en/news/96351/new-indonesian-maritime-affairs-minister-declares-war-against-illegal-fishing>.
2. "Minister Pudjiastuti Apologizes for Taking 'Shortcut' on New Regulation", *Republika Newspaper* (Jakarta), 11 November 2014. Available from <http://nasional.republika.co.id/berita/nasional/politik/14/11/11/nevcrp-kpu-siapkan-simulasi-pilkada-serentak-2015>.
3. Sunan J. Rustam, "Legal Review of "Sink the Vessel" Policy", *The Jakarta Post*, 6 December 2014. Available from <http://www.thejakartapost.com/news/2014/12/06/a-legal-review-sink-vessel-policy.html#sthash.zY2qAWj3.dpuf>.
4. "Minister Susi Gives Transition Period before Trawl, Seine Net Ban", *Tempo Magazine* (Jakarta), 2 February 2015. Available from <http://en.tempco.co/read/news/2015/02/02/056639410/Minister-Susi-Gives-Transition-Period-before-Trawl-Seine-Net-Ban>.
5. "Menteri Susi, JK dan Kapal Eks Asing (Minister Susi, JK and Ex-Foreign Fishing Vessels)", *Gatra News* (Jakarta), 11 April 2016. Available from <http://www.gatra.com/fokus-berita-1/195125-menteri-susi-jk-dan-kapal-eks-asing>.
6. "New Indonesian Maritime Affairs Minister Declares War against Illegal Fishing", *Antara News* (Jakarta), 31 October 2014. Available from <https://www.antaraneews.com/en/news/96351/new-indonesian-maritime-affairs-minister-declares-war-against-illegal-fishing>.
7. "Jokowi Launches Maritime Doctrine to the World", *The Jakarta Post* (Jakarta), 13 November 2014. Available from <http://www.thejakartapost.com/news/2014/11/13/jokowi-launches-maritime-doctrine-world.html>.
8. "Minister Susi Gives Transition Period before Trawl, Seine Net Ban", *Tempo Magazine* (Jakarta), 2 February 2015. Available from <http://en.tempco.co/read/news/2015/02/02/056639410/Minister-Susi-Gives-Transition-Period-before-Trawl-Seine-Net-Ban>.
9. "Reviewing Transshipment Bans", *Maritime News* (Jakarta), 9 March 2015, <https://maritimeneews.id/reviewing-transshipment-ban/>.
10. "Over 300 Slaves Rescued from Indonesia Island After AP Investigation into Forced Labour", *Associated Press* (Jakarta), 4 April 2015. Available from <http://www.ap.org/explore/seafood-from-slaves/over-300-slaves-rescued-from-Indonesia-island-after-ap-investigation.html>.
11. "BKPM to Revoke License of Benjina Firm", *The Jakarta Post* (Jakarta), 2 May 2015. Available from <http://www.thejakartapost.com/news/2015/05/02/bkpm-revoke-license-benjina-firm.html>.
12. "RI to Sink Boats from China, Thailand, Malaysia on Wednesday", *The Jakarta Post* (Jakarta), 19 May 2015 <http://www.thejakartapost.com/news/2015/05/19/ri-sink-boats-china-thailand-malaysia-wednesday.html>.
13. "China Illegally Fishing off Coast of West Africa, Greenpeace Study Reveals". *The Guardian* (China), 20 May 2015. Available from

<https://www.theguardian.com/world/2015/may/20/china-illegally-fishing-off-coast-of-west-africa-greenpeace-study-reveals>.

14. "Susi Continues Legal Fight Against *Hai Fa*", *The Jakarta Post* (Jakarta), 20 June 2015. Available from <http://www.thejakartapost.com/news/2015/06/20/susi-continues-legal-fight-against-hai-fa.html>.
15. "Susi Calls for Global Fisheries Data-Sharing", *The Jakarta Post* (Jakarta), 20 November 2015. Available from <http://www.thejakartapost.com/news/2015/11/20/susi-calls-global-fisheries-data-sharing.html>.
16. "RI to Sink 3 Foreign Ships for Illegal Fishing", *The Jakarta Post* (Jakarta), 5 December 2015. Available from <http://www.thejakartapost.com/news/2014/12/05/ri-sink-3-foreign-ships-illegal-fishing.html>.
17. "Govt Hunts Down Hundreds of Outlawed Vessels", *The Jakarta Post* (Jakarta), 24 February 2016. Available from <http://www.thejakartapost.com/news/2016/02/24/govt-hunts-down-hundreds-outlawed-vessels.html>.
18. "The End of Foreign Fishing Boats?", *Tempo Magazine* (Jakarta), 10 March 2016. Available from <http://en.tempo.co/read/news/2016/03/10/314752267/The-End-of-Foreign-Fishing-Boats>.
19. "Susi Pudjiastuti: Pak Jusuf Kalla was Duped", *Tempo Magazine Online* (Jakarta), 06 April 2016. Available from <http://en.tempo.co/read/news/2016/04/06/241760240/Susi-Pudjiastuti-Pak-Jusuf-Kalla-was-duped>.
20. "Kadin: Satu Juta Pengangguran di Industri Perikanan (Indonesia Chamber of Commerce: One Million Unemployment in Fisheries Industry)", *Gatra News* (Jakarta), 11 April 2016. Available from <http://www.gatra.com/fokus-berita-1/195202-kadin-satu-juta-penganggur-di-industri-perikanan>.
21. "Menteri Susi, JK dan Kapal Eks Asing (Minister Susi, JK and Ex-Foreign Fishing Vessels)", *Gatra News* (Jakarta), 11 April 2016. Available from <http://www.gatra.com/fokus-berita-1/195125-menteri-susi-jk-dan-kapal-eks-asing>.
22. "Sinking Illegal Fishing Vessels' Publicity aims to Scare, Susi Says", *The Jakarta Post* (Jakarta), 14 April 2016. Available from <http://www.thejakartapost.com/news/2016/04/14/sinking-illegal-fishing-vessels-publicity-aims-to-scare-susi-says.html>.
23. "RI, South Africa Establish Bilateral Joint Commission", *The Jakarta Post* (Jakarta), 20 April 2016. Available from <http://www.thejakartapost.com/news/2015/04/20/ri-south-africa-establish-bilateral-joint-commission.html>.
24. "Tackling Crime in High Seas", *The Star* (South Africa), 18 May 2016. Available from <https://news.nmmu.ac.za/news/media/Store/documents/2016/Heather-Dugmore-Tackling-crime-on-high-seas.pdf>.
25. "Task Force: the Highest Violation of Vessel Regulation Occurred in Maluku (Satgas: Pelanggaran Peraturan Kapal Tertinggi ada di Maluku)", *Mongabay*, 8 June 2015. Available from <http://www.mongabay.co.id/2015/06/08/satgas-pelanggaran-peraturan-kapal-tertinggi-ada-di-maluku/>.
26. "Protecting Our Waters from Fisheries Crimes", *the Jakarta Post* (Jakarta), 14 June 2016. Available from

<http://www.thejakartapost.com/academia/2016/06/14/protecting-our-waters-from-fisheries-crimes.html>.

27. "UNDP: Not Many Illegal Fishing Cases Appeared before the Court (Tidak Banyak Kasus Pencurian Ikan Masuk Pengadilan)", *Tempo*, 16 June 2016. Available from <https://nasional.tempo.co/read/news/2016/04/19/206763809/undp-tidak-banyak-kasus-pencurian-ikan-masuk-pengadilan>.
28. "Stop Lobbying Govt to Ease Fishing Moratorium, Minister Demands", *The Jakarta Post* (Jakarta), 22 June 2016. Available from <http://www.thejakartapost.com/news/2016/06/22/stop-lobbying-govt-to-ease-fishing-moratorium-minister-demands.html>.
29. "Zero Tolerance for Poachers", *The Jakarta Post* (Jakarta), 22 June 2016. Available from <http://www.thejakartapost.com/news/2016/06/22/zero-tolerance-for-poachers.html>.
30. "Indonesia Sinks 60 Fishing Boats on Independence Day", *The Wall Street Journal* (New York), 17 August 2016. Available from <http://www.wsj.com/articles/indonesia-sinks-60-fishing-boats-on-independence-day-1471428634>.
31. "Minister Susi Focuses on Enhancing International Cooperation", *Antara News* (Jakarta), 30 August 2016. Available from <http://www.antaraneews.com/en/news/100214/minister-susi-focuses-on-enhancing-international-cooperation>.

#### **L. Website with author;**

1. Sack, Karen, "Slavery at Sea; the Human Cost of Illegal Fishing", *Huffington Post*, 31 July 2016. Available from [http://www.huffingtonpost.com/ocean-unite/slavery-at-sea-the-human- b\\_7912334.html](http://www.huffingtonpost.com/ocean-unite/slavery-at-sea-the-human- b_7912334.html).
2. Van as, Hennie, "Africa Needs Collaboration and Support to Tackle Crime at Sea", *the Conversation*, 13 July 2016. Available from <https://theconversation.com/africa-needs-collaboration-and-support-to-tackle-crime-at-sea-61828>.
3. Berkovic, Nicola, 'Call for New Powers to Deal with Organised Crime on High Seas', *the Australian* (online), 24 April 2015, <<http://www.theaustralian.com.au/national-affairs/call-for-new-powers-to-deal-with-organised-crime-on-high-seas/story-fn59niix-1227317735345?sv=58400ab71f725add3dc0ee80f3a1a2cc>>
4. Santosa, Mas Achmad, "Strategy on the Prevention and Eradication of IUU Fishing and Post-Moratorium Policy", 6 November 2015. Available from [http://fisheriestransparency.org/wp-content/uploads/2015/11/Presentation\\_Combating\\_IUUF\\_Efforts\\_in\\_Indonesia\\_20151109.pdf](http://fisheriestransparency.org/wp-content/uploads/2015/11/Presentation_Combating_IUUF_Efforts_in_Indonesia_20151109.pdf).
5. Kleven, Anthony, "China and Africa's Illegal Fishing Problem", 19 August 2016. Available from <http://thediplomat.com/2016/08/china-and-africas-illegal-fishing-problem/>.

#### **M. Others**

1. Sodik, Dikdik Mohammad, "Combating Illegal, Unreported and Unregulated Fishing in Indonesian Waters: the Need for Fisheries Legislative Reform", PhD dissertation, University of Wollongong, 2007.

2. Colbourn, Elinor, "U.S Criminal Fisheries Enforcement History, Tools, Reasons", Presentation in Chatham House, London, 13 January 2011. Available from <https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Energy,%20Environment%20and%20Development/130111colbourn.pdf>.
3. Edeson, William, "Tools to Address IUU Fishing: the Current Legal Situation," in Expert Consultation on Illegal, Unreported and Unregulated Fishing Organized by the Government of Australia in Cooperation with FAO, Sydney, Australia, 15-19 May 2000, AUS:IUU/2000/8.